No. 16-1027

In the Supreme Court of the United States

RYAN AUSTIN COLLINS,
Petitioner,

v.

COMMONWEALTH OF VIRGINIA,
Respondent.

On Writ of Certiorari to the Supreme Court of Virginia

JOINT APPENDIX

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In the Circuit Court of the
County of Albemarle
No. 13-672

Commonwealth of Virginia v. Collins

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I, Roxanne Bruce, Deputy Clerk of the above mentioned court, certify that the papers listed above and filed herein are the original papers in the above styled case.

Teste: Debra M. Shipp, Clerk
By: /s/Roxanne M. Bruce
Deputy Clerk

VIRGINIA: IN THE GENERAL DISTRICT COURT OF ALBEMARLE COUNTY

No. CR13000672

[Filed November 22, 2013]

COMMONWEALTH OF VIRGINIA,	)
	)
Plaintiff,	)
	)
v.	)
	)
RYAN AUSTIN COLLINS,	)
	)
Defendant.	)
	)

PRELIMINARY HEARING

Taken on

October 17, 2013

LANE'S COURT REPORTERS, INC.
401 8th STREET NE
CHARLOTTESVILLE, VIRGINIA 22902

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APPEARANCES:

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BEFORE: The Honorable William G. Barkley

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EXAMINATION OF DAVID RHODES [1-49]

October 17, 2013

THE COURT: Ryan Collins.

MR. CASEY: Preliminary hearing, Your Honor.

(Court addressing another case at this time)

THE COURT: All right, let me swear you in.

(Witnesses sworn)

MR. CASEY: Start with Officer Rhodes, Your Honor.

THE COURT: All right.

OFFICER DAVID RHODES, having been so duly sworn, testified as follows:

DIRECT EXAMINATION

By: Mr. Casey

Q Good morning, sir, would you please introduce yourself for the record.

A Officer David Rhodes with the Albemarle County Police Department traffic unit.

Q And, Officer Rhodes, were you so employed on the 10th day of September of this year?

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A I was.

Q And on that day did you have occasion to come in to contact with the defendant in this case, Mr. Ryan Collins?

A I did.

Q All right, and do you see Mr. Collins in the courtroom today?

A I did, right here.

Q The Court will note for the record---

A To my left.

Q Oh, the Court will note for the record the witness identified the defendant.

THE COURT: Yes, sir.

Q Now, Officer Rhodes, I'm going to take you back, if I could for a second, to July the 25th, and I'm going to ask you on July the 25th were you working?

A I was.

Q Were you wearing uniform, badge of authority?

A Yes.

Q And were you operating a marked patrol vehicle or a Albemarle County unit?

A I was operating my unmarked, my issued unmarked Albemarle County police unit, yes.

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Q All right. And that particular day did you have occasion to come into contact with any kind of motorcycles that day?

A Yes, I was travelling on the 250 Bypass travelling southbound in the area approaching Ivy Road, I observed a motorcycle approaching from the same direction as I was travelling, also travelling southbound in the left lane at a high rate of speed approaching me from behind, approaching my position.

Q All right. And when you say a high rate of speed, do you know what the marked speed limit is around that area?

A It's 55 in that area between the Barr---I started noticing the motorcycle from the Barracks Road exit travelling southbound, approaching where I was, topping at the hill at Ivy, Old Ivy Road area.

Q All right. And so were you yourself going about 55, or more, or less, or do you remember?

A 55.

Q 55?

A 50-55.

Q And so this vehicle is approaching you then, presumably, would be going somewhat more than 55 if it's approaching you, is that right?

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A That's correct.

Q Okay.

A And I could tell based on training experience I was looking at the vehicle in my rearview mirror and in my side mirror and could see the vehicle was approaching at a very high rate of speed. Based on that I activated my radar in a same direction mode, which would obtain the speed of the vehicle coming up behind me. When I activated the radar I got a clear reading. It was the only vehicle between, only vehicle actually in the on---in sight from my vehicle to the rear of me anywhere on the bypass, in the same direction. I activated my radar and got a clear steady reading at 100 miles per hour.

Q So what did you do when you got that reading then?

A I slowed down, the motorcycle came up behind me, I slowed down and started to actually move over, knowing that motorcycles, in my experience, will sometimes attempt to try to get away or duck off when

they realize the police are going to try to stop them. I then made a move that I was going to get off the bypass onto Old Ivy Road or Faulkner Drive area right by the school. Once I committed to that and the motorcycle had committed to stay on the bypass, I then got back on the bypass directly beside the motorcy-

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cle. We were directly beside and we had slowed down to a very slow speed of under 55, probably 45 miles per hour at that point. The motorcyclist and I actually made eye contact through my driver side window. I activated my lights, and when I did the motorcyclist looked at me, laid down on the bike, downshifted, and took off.

Q And when you say the motorcyclist looked at you, was this a---was this person dressed in a way that you could see their face or did they have---

A No.

Q ---some kind of safety equipment on?

A No, they had a full face helmet with a tinted helmet shield on, I couldn't see the face at all. The only thing I could identify was the motorcycle itself.

Q But you were able at that particular---was this at daytime or nighttime?

A It was daytime.

Q So were you able to get a good look at the motorcycle?

A I was.

Q And what did the motorcycle look like?

A It was orange, the swing arm, which is the rear part of the motorcycle, was stretched out very---longer than what factory would be, more of a sport and racing type mo-

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torcycle. It was bright orange or burnt orange color, and also bla---it had black on it, was chrome, it was all chrome, had all the forks in the front, all the swing arm, the wheels were all chrome. I was, literally, it was probably almost within a arm's reach of my car, so I could see it very well from where I was seated.

Q Now, Officer Rhodes, I don't know a whole lot about motorcycles, but you're in the traffic unit and traffic unit runs motorcycles a lot or (unintelligible), this particular motorcycle, in your training experience in the traffic unit, is this a---was this a particularly unusual or particularly common, or how would you describe the relative commonality of this motorcycle?

A Somewhat unusual with the fact of it being all chrome. A lot of money had been put into this motorcycle, accessories, after-market accessories in my opinion was, it was chrome, chrome wheels, it was stretched out, usually that indicates a racing type motorcycle, somebody may be dragging, drag racing this motorcycle or something of that nature.

Q I got you. So this motorcycle takes off, and were you able to catch it?

A No, I was not.

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Q So, the motorcycle takes off, and then, let me take you now to September the 10t. So September the 10th did you have occasion to respond to an area here in Albemarle County and see the defendant?

A I did. I was actually working on something else and patrol units had gotten a call to respond to DMV on Ivy Road here in the county for someone that was attempting to register a vehicle that had come back as stolen out of New Jersey.

Q All right. So did you respond to the DMV here in Albemarle County?

A I did.

Q And is that the DMV up on Pantops?

A Yes, it is.

Q All right. Now when you responded were there other officers already there?

A Yes, there was a couple other officers that were already there.

Q Do you remember who those officers were?

A It was Officer Cavanaugh, Vanderveer, and Officer McCall also came, he and I arrived about the same, Matt McCall arrived about the same time.

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Q All right. And when you arrived there did you find anybody else, any civilians that were notable to you besides these officers?

A Mr. Collins was there, and there was somebody else there, I don't remember, there was somebody else standing around, I think maybe it was a security officer from DMV initially.

Q Okay. But the defendant was there?

A Yes.

Q All right. And was the defendant speaking to you or any other officers when you arrived?

A He was speaking to Officer Vanderveer when I got there, to Vanderveer and to Cavanaugh at the same time.

Q All right. So did you walk up and have a conversation or participate in the conversation with the defendant?

A I did.

Q All right. And tell the court, please, what that conversation---what was that conversation about and what did the defendant say, what happened?

A Officer McCall was also there, he'd had this motorcycle we believe to be the same motorcycle that I attempted to stop on June 4th, he had tried to stop the same motorcycle on Seminole Trail and Hydraulic, and so he was

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there for the same reason I was. We had both developed this, and Mr. Collins is a suspect in that incident, so once we heard his information being run on the radio, that's how we ended up at DMV was we heard Ryan Collins' name run across the radio, so I

went there to try to speak with him in reference to that. Officer McCall, in my presence, read Mr. Collins the Miranda warning and he agreed to speak with us. While speaking with us I asked him about this motorcycle and if he knew what I was talking about. He told me he didn't know anything about a motorcycle and he hadn't ridden a motorcycle in months. We went on to talk a little bit more about it. While Officer McCall was speaking with him I went over and looked at Mr. Collins' Facebook page and observed a couple pictures of---that he had on his Facebook page, he had indicated unbackable (sic), but he had indicated to me that he had sold a black Acura just a few weeks prior to that, and now had a silver Acura that was there right in front of me that I was looking at that he was trying to obtain a title to, or transfer title to him that was in that parking lot. During the course of looking at his Facebook page, there was a picture of that silver car, the black Acura that he had---I assumed that he had indicated that he was trying to---had sold a few weeks before. In the background of that picture was a motorcycle that looked

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identical to the one that I had tried to stop on the bypass. I took photographs of that, which I have on my phone. I took photographs of the screen on the computer. I went back and showed Mr. Collins those pictures and asked him where that motorcycle was, he knew about that motorcycle, he told me he didn't know anything about it.

Q So, did you speak to him about, you said that he told you that he was there because he was trying to register or get a title to a silver Acura?

A That's correct.

Q So tell the judge, if you would please, did you have a conversation with him about his attempt to register the silver Acura?

A I did. We spoke a little bit about it. He had---he had the title with him, and he told me---we started talking about sale price, and I asked him about the---how much he had paid for the Acura, and he told me $6,000. When I started looking at the title, it said $1,500 on the sale price. It was indicated on---on the title itself had $1,500 written in it as the sale price of that Acura. Which, the same one he was trying to register to him. I looked at the VIN number and matched the VIN number on that car to the title that I had in my hand that he had provided to me. And so we talked a little bit about that. Not a whole lot, but

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I was more, at that point, really trying to get to the---find where this motorcycle was at that point. But did get that information about the title that was, basically had been forged.

Q So I'm going to stop right there for a second and ask you, I'm going to show you two documents that I'll ask to be admitted as Commonwealth's exhibits 1 and 2. Do you recognize these two documents?

A I do. This is the title that I obtained, and this Agent Davis provided to me this morning. I hadn't seen this until today, but that's it.

Q Okay. So this here is just the document that he had that particular day that he had in his possession, is that right?

A That's correct.

Q Now, I want to ask you, Officer Rhodes, in red here is written the word copy. Was that written here on the day that Mr. Collins presented you with this document?

A No. This---I made a photocopy, a color copy, of the title, placed the original color copy, or the original title that he had, I placed that into evidence, and I made a color copy of this and wrote copy there just if something happened to it, somebody couldn't use that.

Q But otherwise, in any other way does it look---

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A It's identical.

Q ---a true and accurate copy of---

A Yes.

Q ---the title that you got?

A Yes, it is. Yes, it is.

Q May I cross over, please? You said that he---

MR. WEBER: No objection.

Q Oh, thank you. So, let me ask you, Officer Rhodes, you said that he said he paid $6,000 for the vehicle, is that right?

A That's correct.

Q But here it says sale price of $1,500, is that right?

A That's correct.

Q So did you speak to him about that difference in price?

A I don't recall what we, exactly what the difference in price, what we---I did question that I thought the vehicle was worth more than $1,500, based on looking at the vehicle, but I don't recall exactly what our conversation was related to the difference between the 6,000 and the 1,500.

Q In other words, he didn't give you any explanation---

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A No.

Q ---that you remember?

A No, other than he did mention a couple times that he was trying to save money by avoiding the taxes that would be required if he paid six---if he put $6,000 on the title. So he was trying to avoid, basically, avoid the taxes because of having a kid and having a family, trying to avoid, save some money.

Q I got you. So, let me take you back to this motorcycle again. So you were speaking to him about this motorcycle, and you show him the photograph, he says I don't know anything about that motorcycle. So, tell me what happened, tell the judge, please, what happened next?

A Mr. Collins had indicated not far---not long after I showed him that picture that he was done talking with us, and we told him he was fine he could leave, and so he left. Immediately following that I actually received information that the motorcycle was located on Dellmead Avenue in city of Charlottesville. I used to work for the city police department, and looking at that picture that was on his Facebook page I knew that those---most of those houses in that area were brick ranch style homes in that general area off of Angus Road, and somewhat made sense that that could be a possibility, so I went to the Dellmead Avenue---to

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Dellmead Avenue and looked to attempt to find this motorcycle that we were looking for. When I got to Dellmead Avenue, the address, the exact address was 2304 Apartment B, it's a duplex, on Dellmead Avenue, it's right off of Angus Road in the city. When I got there there was a motorcycle, it was parked behind a silver 4Runner, kind of parallel or almost behind it, it was kind of up against a wall, but it was visible from the roadway. It was under a white cover, I could see underneath the bottom part of the cover, the tires were sticking out, sitting on the asphalt, so the tires were sticking out and I could see chrome wheels on both, both chrome wheels, the front and the back I could see were chromed. It was also longer, which was consistent with what I was looking for, what that motorcycle would have been. Underneath that cover there a, you know, the outline of the bike appeared to be longer under that cover than what a conventional stock motorcycle would be.

Q Did the cover cover the entire, even the front wheel as well, or was the front wheel exposed in any way?

A It was exposed, the underside part of the wheel, maybe about half of the front tire and wheel were exposed where you could actually see them, and you could actually see the chrome on the wheels on the front, for sure, and a little bit on the back.

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Q So, Officer Rhodes, having seen that, tell the judge please, if you would, what happened next.

A I went and actually pulled the cover, based on that it appeared to be the motorcycle that I was probably looking for. I pulled the cover back, looked at the tag on the motorcycle, which was different than the tag I initially had on that motorcycle, and I attempted to stop it. That tag that day came back not on file. The tag that was displayed on the motorcycle at the time when I tried to stop it on the bypass on the 25th of July was not on file. Through our PISTOL local search I did come up with some information where it had been stopped on another motorcycle by another officer that was registered to Eric Jones, and that comes into play a little bit later. But, anyway, the motorcycle that was there on Dellmead with the tag, I ran that tag and it came back to a different motorcycle, not---it came back to a Kawasaki, this was on a Suzuki motorcycle.

Q And tell us, please, what kind of motorcycle was this. You said it was a Suzuki, is it a particular model or?

A It's a Suzuki GSXR 750.

Q And do you know what year the motorcycle is?

A I believe 2008, I believe, I'd have to look back, I don't recall exactly. But I think it---

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Q Off the top of your head you don't?

A I think it was 2008.

Q Okay.

A So once I removed the cover, as soon as I removed the cover I realized this is exactly the motorcycle I was looking for. Ran that tag, it came back to the wrong motorcycle. Ran the VIN number off of---that was displayed on the motorcycle. It came back stolen out of New York.

Q Do you know what date it was---had been stolen out of New York? Was it recently or was it sometime before?

A No, it was quite some time. A couple of years.

Q Okay. Go ahead.

A I then---there was nobody at the residence at that time, I then covered the motorcycle back up and left. Hoping to, assuming that Mr. Collins was coming back to Dellmead Avenue so I could speak with him. A short time later, I went on, parked on another street. I observed the vehicle that he had gotten into to leave from the DMV to go back to wherever he was leaving from the DMV. I observed it pass me, and Mr. Collins wasn't in that vehicle. There had been three occupants, his brother, I believe, was driving, a female, and then

Mr. Collins had been seated in the back of the car. I saw him leave DMV in that vehicle.

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Q Now, when you say that vehicle, are we talking about the silver Acura or something else?

A No, something totally different.

Q Something totally different, okay.

A The reason I say that is once I saw that vehicle come down the street, he wasn't in it, I made the assumption he was at Dellmead Avenue, he had been dropped off at Dellmead Avenue. So I went back to the address on Dellmead, knocked on the door, he came to the door, and he had changed clothes, he was wearing something different than what he had been wearing at DMV 30 minutes prior.

Q Now let me ask you a question, this was---this particular day was September the 10th, is that right?

A That's correct.

Q Was it a warm day or a cold day or something different?

A It was pretty warm. It was up in the, I would say over 90 that day.

Q Okay.

A It was pretty warm that day.

Q And when he came to the door was he dressed in--do you remember how he was dressed?

[p.20]

A He was wearing a pair of jeans, tan work boots, work style boots, and a long sleeve shirt, I don't, maybe a sweatshirt type shirt.

Q Thick clothing?

A Thicker, yeah.

Q Okay.

A Heavier than what I would think you'd wear in the summer.

Q Okay. So he's wearing this clothing, and tell the judge, please, when he comes to the door what happened next?

A I asked him, I said do you mind if I speak with you, and he said sure. We came---came outside, and I started inquiring about the motorcycle. I asked him he knew about this motorcycle, he told me he didn't know anything about it, it was a friend's. I then asked him, you told me when the last time was you had ridden a motorcycle, and he had told me prior that, at DMV he had told me it had been several months. He had then told me well I did ride it over, bring it over from my mom's, over in Northfield over to Dellmead Avenue, but that had been a while and I don't ever drive it, because I don't have a motorcycle license.

Q Now you're using that word it, is he talking about---

[p.21]

A The motorcycle, I'm sorry. He's talking about that motorcycle, I had uncovered it and said whose

motorcycle is this? He told me that he didn't know anything about it and that he had only ridden it over there one time because he didn't have a motorcycle license and he doesn't routinely ride it. I'd also established some inform---gotten some informat---or received some information that this same motorcycle may have been at Jarman's Sportcycle very recently to obtain, to have new tires put on it. Officer McCall went to Jarman's and spoke with them, and I've got the receipt from where the motorcycle was there on September 2nd, it was there to have new tires put on it.

Q So did you speak to him about that?

A I did. He then told me, well, yeah, you're right, I did take it to Jarman's and get the tires put on the motorcycle.

Q You had mentioned earlier, Officer Rhodes, that the tag on the motorcycle didn't belong to that motorcycle. So did you ask him about that tag to that motorcycle that was on there?

A I did. He told me that it had come off of another motorcycle that he had purchased and since sold.

Q Did he tell you then, ultimately, whose motorcycle it was?

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A He told me it was---he didn't---it was his. He told me ultimately he had bought it, he had paid $3,500 to Eric Jones for the motorcycle, and that's where the tag comes back into play that I initially had on the motorcycle that day, which corroborated that story that

that tag had had involvement with Eric Jones on it initially, and now he's telling me that---

Q He bought the motorcycle from Eric Jones?

A The motorcycle from Eric Jones, and he had paid $3,500 for it, and there was no title for the motorcycle.

Q Okay. Did you place the defendant under arrest?

A I did.

Q And when you arrested the defendant, did you conduct a search incident to arrest?

A I did.

Q Now when you searched the defendant incident to arrest, did you find anything particular on his person?

A His wallet, and he had a key that worked that--- that operated that motorcycle, in his pocket.

Q Now, I want to ask you one more question, if I could, about that title. After you arrested him did you speak to him again about the title, do you remember having any more, questioning him about the title?

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A Yes.

Q Did he indicate to you who signed the title in this case?

A He told me that he had signed the title.

Q All right. And did he make any more statements to you about his title or the intent that he had when he passed that title to DMV?

A He just told me he was trying to avoid the taxes and save money.

Q All right. With respect to the incident at DMV, did everything there take place in the County of Albemarle?

A Yes.

Q And how about when you spoke to the defendant at the house, everything take place in Albemarle County as well?

A That was actually the city of Charlottesville, just right around the corner from the county, but that was actually in the city.

Q Was it within 300 yards of the county?

A Sure.

Q Okay. Those are the questions that I have for you, Officer Rhodes, but please any questions that Mr. Weber might have for you.

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CROSS-EXAMINATION

By: Mr. Weber

Q Officer Rhodes, you say you responded to DMV because you heard about Mr. Collins attempting to register a vehicle that was stolen, is that correct?

A That's correct.

Q All right. And you said you went there to investigate an incident that occurred on July 25th?

A Well I went there initially---right. I went there on September 10th because his name was run across the radio, and he was my suspect from that incident on July 25th, that's correct.

Q You said you had developed him as a suspect---

A That's correct.

Q ---in this incident with the motorcycle---

A That's correct.

Q ---that passed you on 250. So that whole stuff about the incident on 250, that's what you were investigating, is that correct?

A Yes, sir, that's correct. I went there for that, yes.

Q That night. Now you've had contacts with Mr. Collins in the past, is that right?

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A I have, yes.

Q Many times, isn't that right?

A A couple times, yes.

Q Yeah. And you know where he lives. You know his mom lives on Northfields, right?

A Right, oh, yes.

Q And you know that he was living there too, right?

A I don't know where he was living, but that's the address he gave me the day we were at DMV, yes.

Q But on July 25th up through September 10th, did you ever make any attempt to go to visit him at his house?

A Several attempts, yeah.

Q Did you ever---

A Never, we went by the house and there was never anybody there, nobody would come to the door. I didn't personally do that, I did that one time, and another officer did it on the evening shift one time.

Q So from---you're saying from July 25th to September 10th you went by several times to his house and nobody was there?

A I went by, I drove by there twice. I went one time to the door, and another officer went one time to the door, I think it was once or twice.

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Q Okay, and you're saying nobody was there?

A We never---I don't know if anybody was there or not, but there was no response.

Q No response the time you went to the door, is that right?

A Correct, that's right.

Q Okay. And so what you heard on September 10th, you heard his name on the scanner, and you said ah, he's there, I'm going to go see him, is that right?

A I heard his name on my police radio, yes.

Q Right, okay. So that's why you were there. All right, just wanted to verify that. Now, so he was up there dealing with another motor vehicle that was reported stolen, is that correct?

A Right, out of New Jersey.

Q A silver Acura, is that what it was?

A That's correct.

Q He was attempting to register that?

A Yes, that's correct.

Q Okay. Now, as it turns out subsequent investigation that vehicle was not stolen, is that correct?

A Yeah, something to do with New Jersey, something happened in New Jersey and they'd done something, I don't know what that was, but---

[p.27]

Q Right.

A ---we did get information later that that was not correct.

Q Turned out that it was not stolen?

A That's right.

Q That he had actually legitimately bought the vehicle, and that he was---

A The best we could tell, yes

Q ---attempting to register it. Okay, let me---can I show you one other document here regarding that, show you this bill of sale here?

A Sure.

Q Now in addition to the title, you also received this piece of information, is that correct?

A I got this this morning from Agent Davis, I didn't have access to this until this morning, until just now.

Q Okay, but that's a bill of sale from the seller to the buyer, is that right?

A It appears to be, yes. It says a vehicle price certification, and then underneath it there's parenthesis, says bill of sale.

Q And it's signed by both the seller and the buyer?

[p.28]

A That's correct.

Q And, of course, the title is signed by both the seller and the buyer, right?

A That's right. Appears to be, I don't know who this person is, but it appears to be, yes.

Q Okay, right. But that says that the price was $1,500, is that right?

A That's correct.

Q So the only information you have that it was different than 1500 is what he told you?

A That's correct.

Q Okay. Now, you then said that while you were having contact with him you went on his Facebook page and developed information about where the motorcycle was and all that. You had not done that at any time prior to September 10th?

A I had done that. However, the pictures that were---the information that I'd received, I didn't personally see the---I didn't personally have access to his Facebook page, but I know somebody that does, and the pictures he initially had on the Facebook page, my understanding was that they had been removed right after July 25th.

Q Okay. But what I'm---

[p.29]

A But, no, my---I did not make an attempt to do that between those two dates, because they had been removed is what I was told, and I didn't have access to his page.

Q All right. Now, but somebody in your unit did have access to his page?

A That's correct.

Q Okay. But you didn't ask that person to check his Facebook page prior to September 10th?

A I had, and the pictures had been removed.

Q Okay. Now, you had said that this incident of the eluding, you said the tag---when you finally went to Dellmead and you looked at the motorcycle and you saw the tag on it, that it was not the same tag that was on it when the person was driving it, is that correct?

A That's correct.

Q Okay. The tag that was on it when they were driving came back to Eric Jones, is that right?

A Through DMV it came back not on file, which meant that it had been so long, the tag had been inactive for such a long amount of time that it was then no longer in the system at DMV.

Q Okay.

[p.30]

A So that motorcycle tag, 786100, which was the tag that was on the motorcycle the day of July 25th, had been basically deactivated by DMV.

Q Okay. But you said something, and I thought, maybe I misunderstood, you said different tag and you said it was registered to Eric Jones. What was---

A No, it was---no, maybe I misunderstood, or maybe you misunderstood me, the tag was not on file, period, at all at DMV.

Q Okay.

A When I ran it through our PISTOL system, which is our local database, that tag I ran into that system comes back as having involvements with Eric Jones.

Q I see.

A Okay. So that's how I made the connection with Eric Jones, and then that corroborated what he told me, which was he bought the motorcycle from Eric Jones and that tag was still on it when he got it.

Q Okay. I see, so---

A So it was not a DMV, I couldn't run the tag and get information from DMV, I ran the tag through our PISTOL system to obtain the information.

Q So the tag on the motorcycle on the day that this person attempted to elude you---

[p.31]

A Correct.

Q ---actually came back via your PISTOL to Eric Jones, is that correct?

A That's correct.

Q And you did not see the face of the person who was next to you?

A Right. I could not see it, that's right.

Q Okay. I got you. Now, you also said that when you ran the VIN on the motorcycle it came back stolen out of, was it New York or New Jersey?

A New York. Yes, sir, New York.

Q New York, okay. And you said a couple years. Was it more than a couple years?

A I don't recall how many exact years, I can maybe look in my notes. I don't know if I made notes of how many years ago it was, but it was several years ago. I would say at least, I say a couple, at least two, maybe three, I don't remember exactly.

Q Okay. And, in fact, the person who had owned that motorcycle actually had already settled it with State Farm, is that correct?

A That's correct, yes.

[p.32]

Q So State Farm had already paid it out, so the lien holder on the thing was actually State Farm at this point, is that correct?

A That's right, yes, sir.

Q Okay. Now you also said that Mr. Collins had a key to the motorcycle?

A That's right.

Q So, whatever he got from Mr. Jones, he probably got the key then, as well, is that right?

A I would assume.

Q Okay. And the key started the motorcycle?

A It turned it on---I don't know, I didn't start the motorcycle. It did turn it on. It had a digital readout on it when I turned the key, it would turn on, the digital speedometer would come up, everything lit up on the small dash on the motorcycle. And also gave me the mileage on the motorcycle, so I assumed it operated the motorcycle. I did not start it.

Q As part of your investigation, did you ever determine whether or not when the motorcycle had been stolen whether the key was with it when it was stolen?

A No, there was no key. I spoke with the owner, there was no key with the motorcycle.

Q Okay. So it was stolen without a key?

[p.33]

A That's right.

Q Mr. Collins had a key, and he had gotten the motorcycle from Eric Jones, is that correct?

A That's correct.

Q And throughout this whole time Mr. Collins denied knowing that it was stolen, is that right?

A That's right.

Q I have no further questions, Your Honor.

REDIRECT EXAMINATION

By: Mr. Casey

Q Officer Rhodes, you know something about motorcycles, you've ridden motorcycles and work in a unit that handles motorcycles.

A I actually don't ride motorcycles.

Q You don't ride motorcycles. But you work in a unit that uses a lot of motorcycles?

A Yes, that's correct.

Q If you don't have a key to the motorcycle---to a motorcycle do you just throw it away or is there something that you can do, in your training experience, to deal with that problem?

A Sure, you can replace the ignition and obtain a new key for the motorcycle and still make it operate with a

[p.34]

new---with another ignition. If you pull an old ignition out, same thing in a vehicle or anything, you can take out an old ignition, cut the wires and put everything back together and put a new ignition in it with a new key and still be able to operate the motorcycle.

Q I got you. Now, and in this particular case, counselor asked you about the conversation that you--- so you actually spoke to the owner of the motorcycle it was stolen from, is that right?

A Yes, I did.

Q And were able to verify that it had been stolen from him, is that right?

A Yes, that's right.

Q Those are the questions I have, Judge, thank you.

RECROSS-EXAMINATION

By: Mr. Weber

Q Your Honor, I have a quick follow up question. You indicated that Mr. Collins had used Jarman's to service that motorcycle?

A That's correct.

[p.35]

Q Or get new tires? Okay, was there any evidence that he had taken the motorcycle to Jarman's to get a new key or a new ignition system?

A I don't have that information, no.

Q Okay. I have nothing further. Your Honor.

MR. CASEY: That's all I have for this witness.

THE COURT: All right. Thank you, sir.

MR. CASEY: Call Officer Davis.

CHRISTOPHER DAVIS, having been so duly sworn, testified as follows:

DIRECT EXAMINATION

By: Mr. Casey

Q Good morning, sir, you are Special Agent Christopher Davis of the Department of Motor Vehicles?

A I am.

Q And, sir, were you so employed on the 10th day of September of this year?

A I was.

Q On that day did you have occasion to---excuse me, how long have you been working at the Department of Motor Vehicles?

* * *

VIRGINIA: IN THE CIRCUIT COURT OF ALBEMARLE COUNTY

Case No. CR13000672-00

[Filed December 18, 2013]

COMMONWEALTH OF VIRGINIA,	)
	)
v.	)
	)
RYAN AUSTIN COLLINS	)
	)
Accused.	)
	)

MOTION TO SUPPRESS

TO THE HONORABLE JUDGE OF THIS COURT:

Comes now the Accused, by counsel, and respectfully moves this Court to suppress any and all evidence obtained/seized by any law enforcement officer from the property located at 2304 Dellmead Lane, Charlottesville, VA on or about September 10, 2013 on the basis that the search and seizure was in violation of the Fourth Amendment of the Constitution of the United States of America and the Constitution of the Commonwealth of Virginia.

The Accused further requests that this court order any evidence improperly obtained be excluded from any trial of charges brought against the Accused as a result of the seizure of evidence; and further, that such improperly obtained evidence not be used for any investigative purpose, including obtaining derivative evidence.

RYAN AUSTIN COLLINS
By counsel

We ask this:

/s/Charles L. Weber
Charles L. Weber, Jr.
252 East High Street
Charlottesville; VA 22902
(434) 977-4054
Counsel for the Accused

* * *

[*Service Omitted in the Printing of this Appendix*]

VIRGINIA
IN THE CIRCUIT COURT FOR
THE COUNTY OF ALBEMARLE

Case No. CR13000672

Case No. CR13000673

[Filed April 22, 2014]

COMMONWEALTH OF VIRGINIA	)
	)
v.	)
	)
RYAN AUSTIN COLLINS	)
	)

COMMONWEALTH'S CONSOLIDATED OPPOSITION TO DEFENDANT'S MOTIONS TO SUPPRESS EVIDENCE

The Commonwealth of Virginia, by and through her counsel, Assistant Commonwealth's Attorney Elliott J. Casey, opposes the Defendant's motion to suppress evidence and respectfully requests that this Court deny the motion and rule that all evidence seized in the course of this lawful investigation be admissible at trial. As grounds for this opposition, the Commonwealth relies on the following points and authorities and such other points and authorities as may be cited at a hearing on the motion:

STATEMENT OF FACTS

On September 10, 2013, Officer David Rhodes responded to a call from the Albemarle County DMV that COLLINS was attempting to register a vehicle that was reported to be stolen. Officer Rhodes knew

COLLINS from a different case he was working involving a suspect eluding Officer Rhodes on a burnt orange and black motorcycle with an extended sway arm and chrome wheels on July 25, 2013. Officer Rhodes spoke to COLLINS at the DMV about the vehicle COLLINS was attempting to register. In the course of their conversation, Officer Rhodes observed several photographs posted on COLLINS' Facebook page. One of these photographs depicted the motorcycle involved in the July 25, 2013 eluding incident. In this photo, the motorcycle was in plain view in front of a particular house in an area that Officer Rhodes was familiar with due to his experience patrolling the area. The photograph also depicted the vehicle that COLLINS was attempting to register at the DMV. Officer Rhodes learned about the address of the house in particular from a CI. Officer Rhodes asked COLLINS about the motorcycle, and he said he knew nothing about the motorcycle or the house in the picture. COLLINS also stated that he had not ridden a motorcycle in a few months.

After COLLINS left the DMV, Officer Rhodes drove to Dellmeade Avenue; the street where he believed the photograph of the motorcycle was taken. Officer Rhodes observed a house identical to the house in the photograph, and observed a motorcycle partially covered by a tarp in plain view in the driveway of the house. From the public sidewalk, Officer Rhodes observed that the motorcycle under the tarp appeared longer than a stock motorcycle due to an extended sway arm, and had chrome wheels. From his experience on patrol, Officer Rhodes knew these features are rare and not often present on a typical motorcycle. Officer Rhodes proceeded to remove the tarp to examine the

motorcycle. Upon removal of the tarp, the motorcycle had the same burnt orange and black paint job as the motorcycle involved in the July 25, 2013 eluding incident. Officer Rhodes found and ran the motorcycle's VIN, which came back as being stolen.

Officer Rhodes then waited at a distance for COLLINS to come to the house. Officer Rhodes observed COLLINS come into the house. Officer Rhodes then knocked on the house's front door, and COLLINS answered the door. Officer Rhodes asked COLLINS about the motorcycle. After telling Officer Rhodes the motorcycle belonged to a friend, COLLINS changed his story and said he had gotten the motorcycle from Eric Jones.

Officer Rhodes had been given information from a CI that COLLINS had taken the motorcycle to Jarman's Sportcycles to get new tires. While Officer Rhodes was speaking with COLLINS, Officer Matt McCall verified with Jarman's that COLLINS had brought a motorcycle that matched the description of the motorcycle in question into Jarmans on September 2, 2013. Further, the records from Jarman's show that the order was placed by a "Ryan Austin," and the VIN was off by one digit from the motorcycle.[1] Officer Rhodes asked COLLINS about taking the motorcycle to Jarman's. COLLINS admitted to riding the motorcycle to Jarman's to get new tires. COLLINS also admitted that he used the tag of a motorcycle that he had

---

[1] The last four digits of the motorcycle's VIN are 1685. The last four digits of the VIN from the Jarmans' records are 1585. Officer Rhodes believes this discrepancy was due to an error in the entry of the VIN from a Jarmans' employee.

purchased and since sold on the motorcycle in question. He admitted that he bought the motorcycle in question from Eric Jones for $3500.

LAW AND ANALYSIS

I. THE VIN OFFICER RHODES FOUND ON THE MOTORCYCLE IN QUESITON SHOULD NOT BE SUPPRESSED BECAUSE OFFICER RHODES CONDUCTED A LAWFUL SEARCH WITHIN THE SCOPE OF THE FOURTH AMENDMENT

In the case at hand, Officer Rhodes had probable cause to believe that the motorcycle under the tarp was the same motorcycle involved in the eluding incident on July 23, 2013. The motorcycle in question was unique—it had rare components—chrome wheels and an extended sway arm, which caused the motorcycle to have a longer length than a standard motorcycle. Officer Rhodes observed this motorcycle in a photograph on COLLINS' personal Facebook account. The motorcycle was in the same photograph as the vehicle COLLINS was attempting to register at the DMV. Further, after Officer Rhodes drove to the house depicted in the photograph with the motorcycle, he observed from the public sidewalk in plain view a motorcycle under a tarp. The motorcycle was not completely covered, so from his vantage point on the public sidewalk, Officer Rhodes could tell that the motorcycle under the tarp had unique chrome wheels, and that the silhouette of the motorcycle was a longer length than a standard motorcycle. Since Officer Rhodes knew these components were rare, he had reason to believe that the motorcycle under the tarp was the same motorcycle in the Facebook photograph and the same motorcycle involved in the eluding

incident on July 23, 2013. In *Ornelas v. United States,* the Supreme Court described probable cause as "existing where the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found."[2] In this instance, based on Officer Rhodes' knowledge that COLLINS was a suspect in the July 23, 2013 incident, the Facebook photograph of the motorcycle, and the unique characteristics of the motorcycle observable from the public sidewalk, probable cause existed that the motorcycle under the tarp was the same motorcycle used in the July 23, 2013 crime.

Since the motorcycle is considered an automobile for Fourth Amendment purposes, Officer Rhodes did not need to obtain a warrant before he removed the tarp to observe the vehicle's VIN. In *Carroll v. United States,* the Supreme Court found that vehicles are treated differently than stores, dwellings, or other structures for the purposes of the Fourth Amendment. 267 U.S. 132 (1925). There, the court found that since a "vehicle can quickly be moved out of the locality or jurisdiction in which the warrant must be sought," it is not practical to require law enforcement to secure a warrant, so probable cause alone is sufficient to justify a search of a vehicle.[3] This "automobile exception" to the Fourth Amendment has been interpreted broadly. The Supreme Court found that the *Carroll* automobile exception to the warrant requirement applies even

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[2] 517 U.S. 690, 696 (1996).

[3] *Id.* at 153.

when there is not a direct threat that the vehicle will be moved from the jurisdiction.[4]

II. THE VIN AND COLOR OF THE MOTORCYCLE WERE FOUND THROUGH AN INDEPENDENT SOURCE

Further, even if Officer Rhodes' removal of the tarp is a violation of COLLINS' Fourth Amendment right against unreasonable searches and seizures, the evidence obtained from the removal (the VIN and the confirmation of the color of the motorcycle) should not be excluded because they were also obtained from an independent source. If the knowledge gained by the government came from an illegal search, the evidence is considered "fruit of the poisonous tree," and thus inadmissible as evidence.[5] However, the Supreme Court found the evidence can be admissible if it is also "gained from an independent source."[6] In this instance, even if Officer Rhodes did not remove the tarp, he would still have been able to discover that the motorcycle was the same motorcycle used in the July 23, 2013 incident through Officer Rhodes' conversation with COLLINS at the house as well as Officer McCall's review of the records at Jarman's. COLLINS voluntarily admitted to buying and riding the motorcycle after Officer Rhodes told him the

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[4] Chambers v. Maroney, 399 U.S. 42 (1970). There, the Court found that a search of a car without a warrant at the police station house was Constitutional under the *Carroll* doctrine.

[5] Wong Sun v. United States, 371 U.S. 471 (1963).

[6] Silverthorne Lumber Co. v. United States, 251 U.S. 385, 392 (1920).

information Officer McCall had found at Jarman's. When Officer Rhodes asked COLLINS about the motorcycle at the house, at no point did Officer Rhodes tell COLLINS he had to answer the questions about the motorcycle. Everything COLLINS told Officer Rhodes about the motorcycle was as a result of COLLINS' free will. Further, Officers Rhodes had Officer McCall ask Jarmans about the motorcycle after receiving information that COLLINS took the motorcycle there from a CI. The employees at Jarman's gave Officer McCall the paperwork from when COLLINS brought in the motorcycle, which had the motorcycle's VIN and description. Because this information was also found using an independent source other than Officer Rhodes' removal of the tarp, it should not be suppressed from evidence.

CONCLUSION

WHEREFORE, the Commonwealth of Virginia respectfully requests that this Honorable Court deny the defendant's motion to suppress.

/s/Elliott Casey
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410 East High Street
Charlottesville, Virginia 22902
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Fax: (434) 972-4093

/s/Eleanor Winn
Eleanor Winn
Third-Year Practitioner

* * *

[*Certificate of Service Omitted in the Printing of this Appendix*]

[COMMON EX. #4,
4-30-14 admitted Judge]

JARMAN'S SPORT CYCLES INC
2120 BERKMAR DR
CHARLOTTESVILLE, VA 22901
434-293-4406

Repair Order Invoice

R/O Number: 6618 Invoice Number: 92544
Date In: 9/2/2013 Today Date: 9/10/2013
Date Promised: 9/2/2013 Date Closed: 9/2/2013
Cashier: MICHAEL E CURRY JR

Repair Order For:

RYAN AUSTIN
1014 LONG STREET
CHARLOTTESVILLE, VA
h:4348828844

Units For This Repair Order

Service Writer: MICHAEL E CURRY JR

Year	Make	Model	VIN/ Serial No.	Key Rate	Board Miles
2008	SUZUKI		JS1GR7LA 882101585		12317

Job: **INSTALL NEW TIRES**
Job For: 2008 SUZUKI GSX-R 600
JSIGR7LA882101585

NOT PURCHASED FROM US

Labor Description	Job Code	Technician	Quantity	Line Total
		JOSEPH D EMANUELE	3 Hours	$180.00
			Labor Subtotal	**$180.00**
			Job Subtotal	**$180.00**
			Customer Job Totals Labor	**$180.00**
			Total of Customer Jobs	**$180.00**
			Other Charges	
			Shop Supplies	**$6.00**
			Repair Order Subtotal	**$186.00**
			Sales Tax	**$0.00**
			Repair Order Total	**$186.00**
			Total Amount Due	**$186.00**
			Cash tendered	**$186.00**
			Change Due	**$0.00**

ALL UNITS NOT PICKED UP WITHIN 3 DAYS OF COMPLETION NOTIFICATION WILL BE CHARGED $20.00 A DAY STORAGE
NO RETURNS ON ELECTRICAL PARTS!
THERE IS A 20% RESTOCKING FEE!
NO RETURN ON SPECIAL ORDERS!
THANK YOU FOR YOUR BUSINESS!

VIRGINIA: IN THE CIRCUIT COURT FOR ALBEMARLE COUNTY

No. 1096-14-2

[Filed July 2, 2014]

COMMONWEALTH OF VIRGINIA,	)
	)
Plaintiff	)
	)
v.	)
	)
RYAN AUSTIN COLLINS,	)
	)
Defendant	)
	)

COURT PROCEEDINGS

Taken On

December 2, 2013
December 18, 2013
April 30, 2014
May 7, 2014

LANE'S COURT REPORTERS, INC
401 8th STREET NE
CHARLOTTESVILLE, VIRGINIA 22902

[p.2]

APPEARANCES:

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Charlottesville, VA 22902
Attorney for Commonwealth

Charles L. Weber, Esq.
252 East High Street
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Attorney for Defendant

BEFORE: The Honorable Cheryl V. Higgins

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[p.3]

May 7, 2014 (Arraignment/Bench Trial/Sentencing)

WITNESSES

WITNESS (Commonwealth)	DIRECT	CROSS	RE-DIRECT	RE-CROSS
Eric Jones	17	22	37	
Matthew McCall	38	43	48	
David Rhodes	49	66		

WITNESS (Defense)	DIRECT	CROSS	RE-DIRECT	RE-CROSS
Kandace Beach	103	107		
Terri Roberts	109	115		

EXHIBITS

NUMBER	DESCRIPTION (Commonwealth)	RECEIVED AT PAGE
1	Photograph of Motorcycle	59

* * *

[p.11]

May 7, 2014

THE COURT: So, are we ready to proceed?

MR. CASEY: Yes, Your Honor.

THE COURT: So, let the record reflect this is the case of Commonwealth versus Ryan Collins. Mr. Collins is in the courtroom with his counsel, Mr. Weber, and Mr. Casey is here on behalf of the Commonwealth and I understood we were here for a bench trial. Is that still the case?

MR. CASEY: Your Honor, it is correct with respect to count one of the indictment, but with count two of the indictment I understand there will be a plea of guilty.

THE COURT: So, Mr. Weber, I think maybe the most efficient way to proceed would go ahead, have him

arraigned on count one, ask him the questions, and then proceed with count two?

MR. WEBER: Yes, Your Honor.

THE COURT: Okay. So, Mr. Collins, if you would come forward to that black recording device. I know there are two indictments but I have to ask you a separate set of questions, so we're just going to read the first indictment, proceed to trial, and then we'll address the second indictment.

MR. COLLINS: Okay.

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THE CLERK: The grand jurors, impaneled, sworn and charged, in and for the body of the County of Albemarle, have found the following indictment against you. Ryan Austin Collins did unlawfully and feloniously, on or about September 10, 2013, buy or receive stolen property having a value of two hundred dollars ($200) or more belonging to another knowing at the time of receipt that the property had been stolen in violation of Section 18.2-108, Section 18.2-95 of the Code of Virginia, 1950, as amended. How do you plead to this indictment, guilty or not guilty?

MR. COLLINS: Not guilty.

THE CLERK: (Witness sworn)

THE COURT: Mr. Collins, I am going to ask you a series of questions to make sure you understand what you are charged with and what your options are. If you do not understand a question that I ask you, let me know and I'll try to rephrase it or you are welcome to

stop at any time and speak privately with Mr. Weber, okay? So, what is your full name?

MR. COLLINS: Ryan Austin Collins.

THE COURT: Mr. Collins, how old are you?

MR. COLLINS: I'm twenty-five (25).

THE COURT: And what is your date of birth?

MR. COLLINS: [redacted], 1989.

* * *

[p.17]

E. Jones - Direct

ERIC JONES, having been so duly sworn, testified as follows:

DIRECT EXAMINATION

By: Mr. Casey

Q Good afternoon, sir. Would you please introduce yourself to the Court?

A I'm Eric.

Q And what's your last name, sir?

A Jones.

Q And, Mr . Jones, you know---may I approach the witness, Your Honor?

THE COURT: Yes.

Q And also counsel?

THE COURT: Yes.

Q I'm going to show you a photograph that's marked as Commonwealth's Exhibit #1, and there is a motorcycle in that picture. Have you seen that motorcycle before?

A Yeah, I used to own it.

Q And do you recall about when it was that you owned the motorcycle?

A It was---I first got it in April, actually, it was March when I had it.

Q I'm sorry?

[p.18]

A March.

Q March? April or March?

A Yeah.

Q And is it of this year or last year?

A Last year.

Q Last year.

A Yeah.

Q And when you got it, did you buy it from someone?

A Yeah.

Q And when you bought it from someone, was there something kind of unusual or funny about the motorcycle?

A Yeah, it didn't have a title.

Q All right, and do you know---

THE COURT: I'm sorry, I didn't hear your answer.

A It didn't have a title.

Q And so do you know why it didn't have a title?

A Possibly stolen.

Q Possibly stolen or you knew it was---

A Yeah, yeah, it was stolen.

Q It was stolen.

A Yeah.

Q Do you know who it was stolen from?

A No, I don't.

Q Okay, and do you know how it was stolen?

[p.19]

A No.

Q Okay, but when you bought the motorcycle, it didn't have a title to it,---

A No.

Q ---and so you had it, and how long did you hold onto it? Do you recall?

A About a month-and-a-half.

Q Okay.

A Yeah.

Q And did you at some point then sell it to someone?

A Yeah.

Q And who did you sell it to?

A Sold it to Ryan.

Q And who is Ryan? Do you know his last name?

A Collins.

Q And when you sold it to Ryan Collins, did you sell it to him for money?

A Yeah.

Q About how much money?

A Eighteen-hundred (1,800).

Q All right, and when you sold it to Ryan Collins, did you tell him about the problem with the motorcycle, about it being stolen?

A Yeah, I did.

[p.20]

Q And did you talk to him about the fact that it didn't have a title?

A Yeah.

Q And what did he tell you in response to the fact that it was stolen and didn't have a title on it?

A It was supposed to be turning into a race bike.

Q Who was going to turn it into a race bike?

A He was.

Q All right, and did he talk to you about how he was going to turn it into a race bike?

A No.

Q All right. Did he talk to you about any plans that he might have for the motorcycle or any changes that he might make to the motorcycle?

A He said he might put a different frame on it.

Q Might put a different frame on it?

A Uh-huh (indicating yes).

Q Okay. So, when you sold it to him---now, can I ask you when you sold it to him, did it have a key? Did it have a key?

A Yeah, it had a key, yeah.

Q All right. When you bought it, did it have a key?

A Yeah.

[p.21]

Q Okay, but you sold it to him and do you recall when that was, more or less, at least---I know it was a while ago, but do you kind of remember?

A Well, yeah, it was last year---I kind of---I know I had it at Easter, last Easter I raced it at the track and then probably the end of April.

Q Okay.

A Yeah.

Q And when you say probably the end of April,---

A Around then.

Q ---are you sure about that or are you guessing or how---what do you---

A Around there somewhere, yeah.

Q Around there somewhere?

A Yeah, yeah.

Q Okay. The person that we've been discussing as Ryan Collins, is he in the courtroom today?

A Yeah.

Q All right. Could you tell the Court where he is?

A Right here.

Q If the Court would note for the record the witness identified the defendant.

THE COURT: The record will so reflect.

* * *

[p.34]

E. Jones - Cross

A I can't remember the exact date, but it was, I want to say two months after I got rid of the bike. He came up to my job at---when I worked at Collier's Towing.

Q So, two months after you got rid of the bike.

A Uh-huh (indicating yes).

Q So, that would have been---

A That was the first time that I talked to him.

Q That would have been June sometime?

A I would say around then.

Q Or July sometime?

A Around July, yeah.

Q Okay, July what?

A I don't---

Q Early July?

A I don't---

Q Mid-July?

A I don't know right off.

Q You don't know.

A No.

Q What did you tell him?

A I told him---

Q Did you tell him that you sold the bike to Ryan Collins?

A Yes, I did.

THE COURT: I'm sorry. Oh, ---

[p.35]

Q The very first time you talked to Officer Rhodes, you told him you sold the bike to Ryan Collins,---

A Uh-huh (indicating yes).

Q ---is that right?

A Yep.

Q Did you tell Officer Rhodes that you thought the bike had been stolen?

A Yeah.

Q At that time.

A Uh-huh (indicating yes).

THE COURT: I'm sorry. Can you---you have to answer yes or no, Mr. Jones, because we record the proceedings.

A Oh, okay, okay.

Q So, the question again was, the very first time you spoke to Officer Rhodes, did you tell him that you told Ryan Collins that the bike was stolen?

A Yes.

Q Okay, but you testified here today that you didn't say that. You just assumed it because it didn't have a title, is that right?

A Yes, I did.

Q All right.

A I figured, you know, it didn't have a title so I just assumed it was stolen.

[p.36]

Q And you spoke with Officer Rhodes a second time, is that right?

A Yes.

Q And did you tell him exactly the same thing the second time that you told him the first time?

A Yes.

Q Okay. Did Officer Rhodes inquire with you about an eluding charge?

A No.

Q Did he ever talk to you about eluding?

A No.

Q Did you ever attempt to buy the bike back from him?

A I thought about it, but I didn't.

Q Did you ask him about it?

A Yeah, one time I did.

Q You did ask him about it.

A Yeah.

Q When was that?

A Like, right after I sold it to him I wanted it back.

Q Nothing further, Your Honor.

THE COURT: Redirect, Mr. Casey.

[p.37]

E. Jones - Redirect

REDIRECT EXAMINATION

By: Mr. Casey

Q So, counsel asked you if you ever told the defendant in this case, Mr. Collins, that you knew the bike was stolen because you didn't know the bike was stolen, but you never talked to Mr. Collins about the fact that---or your belief that the bike was stolen.

A Yes.

Q Okay, that's it.

THE COURT: And what was that conversation?

A I told him, you know, the bike didn't have a title, that it's possibly stolen, I'm not, you know, for sure, but that's how I bought the bike with no title, so---like I was telling him, I assumed it was stolen.

THE COURT: So, I'm going to ask you if you will please wait outside the double doors, but please do not discuss your testimony with anyone.

A Okay.

THE COURT: Thank you.

MR. CASEY: Your Honor, since Mr. Jones is here from work,---

THE COURT: Oh.

MR. CASEY: ---and we're pulling him away from work, my request would be that Mr. Jones be released unless there's an objection from the defense.

[p.38]

M. McCall - Direct

MR. WEBER: Judge, I don't have any objection.

THE COURT: You may step down.

(Court discusses another case at this time)

(OFF THE RECORD)

THE COURT: So, we are back on the record in the case of Commonwealth versus Ryan Collins. Mr. Collins is in the courtroom with his counsel, Mr. Weber, and Mr. Casey is here on behalf of the Commonwealth and we are ready for the next witness.

MR. CASEY: Thank you, Your Honor. The Commonwealth calls Officer Matt McCall.

THE CLERK: (Witness sworn) You may have a seat.

MATTHEW McCALL, having been so duly sworn, testified as follows:

DIRECT EXAMINATION

By: Mr. Casey

Q Good afternoon, sir. For the record would you please introduce yourself to the Court?

[p.39]

A I'm Officer Matt McCall.

Q And, Officer McCall, you're employed with the Albemarle County Police Department?

A That is correct.

Q Were you so employed on the 10th day of September of last year?

A Yes, I was.

Q And on that date, did you have occasion to respond to the DMV located on Abbey Road here in Albemarle County?

A I did.

Q When you responded to the DMV here on Abbey Road in Albemarle County, did you have an occasion to speak to a gentleman named Ryan Collins?

A I did.

Q Did you know Mr. Collins before that day?

A I knew of him. I didn't actually---I don't know him but I knew of him. I recognized the name.

Q All right. Do you see Mr. Collins in the courtroom today?

A That's Mr. Collins seated right there.

Q If the Court would note for the record that the witness identified the defendant.

THE COURT: The record will so reflect.

[p.40]

Q So, Officer McCall, when you responded to the DMV, and just to be clear about this, were you investigating---we're also going to talk about a motorcycle in a minute, but were you investigating a motorcycle or were you investigating something different?

A I recognized the name over the radio and I responded up there due to the fact that I was given some information regarding a motorcycle that eluded me I guess several weeks, months, I don't recall the exact date, but he was a person of interest in that eluding.

Q All right, so when you responded to the DMV then, you located Mr. Collins and did you advise him of his rights under Miranda v. Arizona?

A I did. I pulled my vehicle up and eventually got out and activated my video camera and Mirandized him in front of my car.

Q Did he indicate whether he understood his rights?

A He did understand his rights.

Q And did he indicate whether he would be willing to speak to you?

A He did agree to talk to me.

Q And so did you have a conversation with him? I guess you had a conversation with him probably about a couple of different topics, is that right?

[p.41]

A That's correct.

Q All right. I'm going to jump forward if I can. I'm going to skip over the conversation you had about---anything about an automobile, like an Acura or anything like that,---

A Okay.

Q ---and, instead, I want to ask you in particular about, again, you responded that you wanted to talk to him about a motorcycle, any conversation you had with him about motorcycles.

A I did. I spoke to him about a motorcycle that I was interested---my line of questioning, more or less, went to the fact that I kind of knew he was the person who was driving the motorcycle on the date that this motorcycle eluded me on 29, went down Emmet, took a right on Angus and a left on Wayne and then I discontinued it at that point. That motorcycle driver had a tattoo on his left arm, full sleeve, was wearing yellow Timberland-type-style boots. I was not 100% that that was, in fact, Mr. Collins, but I indicated to him that I thought he was the driver of the motorcycle. He stated to me that he hadn't owned a motorcycle in months, hadn't driven a motorcycle in months, and that it was not him.

Q Did he ever---did he mention to you whether or not he had ever owned a motorcycle at all? And, in

[p.42]

particular, did he give you any detail about the way that motorcycle appeared, (unintelligible) color or something like that?

A He may have made a statement as far as owning a motorcycle, but I don't recall the color or anything like that.

Q Would it refresh your recollection if you were to look at your report?

A Yes, it would.

Q May I approach the witness, Your Honor?

THE COURT: Yes.

A (Reviewing) He said the last one he owned was green.

Q That's what he said?

A That's correct.

Q Officer McCall, those are the questions that I have for you at this point---oh, other than this. Did you participate at all in the investigation subsequently conducted by Officer Rhodes?

A I did. I was present when there was a motorcycle located on Dellmead Avenue in the city, but I didn't have any interaction as far as that was concerned.

Q All right, and those are the questions that I have for you, Officer McCall, but please answer any questions that Mr. Weber might have for you.

[p.43]

CROSS-EXAMINATION

By: Mr. Weber

Q Officer McCall, you indicated an eluding incident that occurred. Was that on June the 4th, 2013?

A I don't recall the exact date but it's possible.

Q Would it refresh your recollection if you looked at your notes?

A Sure.

Q (Unintelligible) notes.

MR. CASEY: May I approach, Your Honor?

THE COURT: Yes.

A (Reviewing) I don't see a date on this particular supplement that I completed.

Q But you didn't make any notes on the day that it happened?

A I can't recall. I may have done a report on it, but I don't have any record of it.

Q Did you talk to Officer Rhodes about it?

A Yeah, we did discuss that specific incident, but I don't recall exactly what the---

Q And he discussed his incident with you---

A Briefly.

[p.44]

M. McCall - Cross

Q ---(unintelligible) and you compared notes on that?

A We may have.

Q So, if he's testified that it was June the 4th, is that probably accurate based upon your---

A It could be. I'm not going to say it is, but it could be.

Q All right. I understand that. Now, the incident that occurred, what time of day did that occur?

A Are you talking about the eluding incident involving me?

Q Yes.

A Okay, that was during the daytime hours. I don't recall exactly what time it was.

Q Morning? Early afternoon?

A I couldn't tell you.

Q Okay, and you said he was on 29?

A That's correct, (unintelligible) right at the city/county line on southbound on Seminole Trail. The vehicle, actually, the motorcycle that was in question was orange or black. It had an extended frame on it. It went sideways and then when I activated my lights, it just took off.

Q Okay, had a helmet on?

A Yes.

[p.45]

Q But you are not able to identify who that was.

A Not 100%, no.

Q Okay. Were you present with Officer Rhodes when other suspects were developed in this case?

A The only time I was present with Officer Rhodes was at the DMV and then an address on Dellmead Avenue in the city.

Q Okay. Did you ever go with Officer Rhodes to interview anybody else regarding the eluding incident?

A Not to my knowledge, no.

Q Did you ever interview Eric Jones?

A No, I never spoke to Eric Jones.

Q He told you that the last motorcycle that he owned was green?

A That's correct according to my notes.

Q Okay, there's no green motor---you said you were present at Dellmead, is that right?

A That's correct.

Q Okay. How long did that encounter at Dellmead last, do you recall?

A I don't. I spoke to the officers that were there. Officer Rhodes was there. There were several other officers, you know, they pointed out a motorcycle that

was underneath a cover that had a chrome wheel that was visible.

[p.46]

After that I think I ended up leaving. Eventually I think I did go to Jarman's Sportcycles.

Q Okay, but you came back from there?

A I may have.

Q Okay, and so they were still there after you went to Jarman's and came back and they were still there?

A I'm trying to get my timeframe down. I can't---the timeframe's kind of fuzzy. I didn't really document much other than the interaction I had at the DMV so---I do know that I was there. I do know I went to Jarman's. I'm just am not sure exactly when, before and after, I'm not sure.

Q Okay, but when you came back, had he---was he already under arrest?

A I believe---my memory is fuzzy about that. I can't---I didn't make any notes. I'm not sure.

Q Did you transport him to the---

A I may have. I believe he was in the back of my car one time. I may have transported him, but I do remember him being in the backseat of my car.

Q Okay, and did you ever have any discussion with him in the car? Let me see if I can refresh your recollection. This is a day where it starts out and he's alleged to have tried to registered a stolen Acura,---

A That's correct.

[p.47]

Q ---is that right?

A That's correct.

Q And it turned out that was not true.

A That's correct.

Q Okay, and the next thing is is he's now being interrogated by you and Officer Rhodes about eluding, is that right?

A That's correct.

Q Okay, he wasn't arrested for eluding.

A That's correct.

Q And he wasn't arrested for receiving the stolen Acura.

A That's correct.

Q Ultimately, he was arrested for receiving a stolen motorcycle.

A By Officer Rhodes, yes, that's correct.

Q Okay, and did you ever hear him deny that he knew it was stolen?

A I can---he never admitted to knowing it was stolen, I can tell you that.

Q Okay.

A I would have made note of that, I'm sure.

Q You know that for sure.

A Yeah.

[p.48]

Q Pretty rough day for a guy to get charged with three separate offenses in one day, right?

A Well, I---well, being charged with one and accused of three, that's correct.

Q What's that?

A I said he was accused of three.

Q Right, okay.

A Yeah.

Q I gotcha. So, when you compared your notes with Officer Rhodes about the eluding, you concluded that it was the same motorcycle?

A Not 100% but there was an awful lot of similarities.

Q Awful lot of similarities, okay.

A That's correct.

Q I have no further questions, Your Honor.

THE COURT: Redirect?

REDIRECT EXAMINATION

By: Mr. Casey

Q Could you tell whether the person---when you talked about the eluding offense, and I know you're not

sure about the date or the time and you couldn't identify the person with 100% certainty. Could you tell whether the person was white or black even?

[p.49]

M. McCall - Redirect

A It was hard to tell (unintelligible) dark-skinned individual.

Q Thank you. That's all I have.

THE COURT: May this witness be released?

MR. CASEY: I would ask that he'd be released, Your Honor.

THE COURT: Any objection, Mr. Weber?

MR. WEBER: No objection.

THE COURT: So, you are free to go or welcome to stay in the courtroom. Please do not discuss your testimony with anyone.

A All right, thank you, Your Honor.

THE COURT: Thank you.

MR. CASEY: Officer David Rhodes.

THE COURT: If you'll remain standing at the witness box and raise your right hand.

THE CLERK: (Witness sworn) You may be seated.

DAVID RHODES, having been so duly sworn, testified as follows:

DIRECT EXAMINATION

By: Mr. Casey

[p.50]

D. Rhodes - Direct

Q Good afternoon, sir. For the record, would you please introduce yourself to the Court?

A Officer David Rhodes with the Albemarle County Police Department traffic unit.

Q And, Officer Rhodes, were you so employed on the 10th day of September of last year?

A I was.

Q On that day did you have occasion to respond to the DMV, the Department of Motor Vehicles here in Albemarle County on Abbey Road?

A Yes, I did.

Q And when you responded, did you have occasion to interact with the defendant in this case, Mr. Ryan Collins?

A I did, yes, I did.

Q Do you see Mr. Collins in the courtroom today?

A Yeah, he's to my left.

Q If the Court would note for the record the witness identified the defendant.

THE COURT: The record will so reflect.

Q Prior to this date, did you know Mr. Collins or had you seen him before?

A I had dealt with him, it had been some time, but I had dealt with him before, yes.

[p.51]

Q All right, but this particular day, you responded to the DMV. What was the---was there a particular reason for your response to the DMV?

A I went there. I had heard Mr. Collins' name across the police radio, and I had been wanting to speak with him in reference to a motorcycle.

Q Okay, so you responded to the DMV.

A I did, yes.

Q And when you got there, did you have a conversation with the defendant in this case?

A I did, yes.

Q Tell the Court, please, I understand there are two different issues here, so what I'd like you to do is---there is an issue involving a motor vehicle, an Acura, and we're not really dealing with that today, so what I'd ask you to do is to confine your conversation if we could to the conversation about the motorcycle---

A Right.

Q ---and what took place as far as your interaction with the defendant on the motorcycle, so if you'd please tell the Court about that.

A I'll back up a little bit and just give a little back story about this motorcycle. It was a motorcycle I attempted to stop on the 250 Bypass in Albemarle County in the area of Ivy Road, Old Ivy Road area, back on July 25th

[p.52]

of 2013. It came up behind me at a high rate of speed. It was the only vehicle around. It came up behind me and actually slowed down very quickly once it realized that it was---that they were coming up behind an unmarked police vehicle. I got a reading of one hundred (100) miles per hour in a posted fifty-five (55) mile per hour zone. I attempted to stop that motorcycle which then fled from me on the bypass. The motorcycle was directly beside me when I tried to stop. It actually came up to my left side at the driver's door, almost within length where I could reach out and almost touch the motorcycle beside my car. So, I had a very good, within a few feet, looking at this motorcycle, knew it was burnt orange with black with some black paint on it and chrome---the chrome swing arm and the chrome wheels were on it. And through my investigation, the tag that was on the motorcycle at the time when I tried to stop it came back not on file. Again, the motorcycle was directly beside me, so I was actually able to see the tag within just a few feet. That came back not on file. Through my investigation and looking into that tag I looked through our local computer, our PISTOL system, which is our local database within the police department, city, county, and university police departments, and put data into and was able to locate that tag had been on a motorcycle that Eric Jones had

been riding at a previous time and had been stopped. I was able, through

[p.53]

other information and talking to other people, developed Mr. Collins as being a suspect that may have been operating that motorcycle the day that I tried to stop it on July 25th, so, ultimately, I went to the DMV to speak with Mr. Collins in reference to that. While I was there, Officer McCall was there as well. He Mirandized Mr. Collins and he agreed to speak with us about any issue we needed to speak with him about, and during Officer McCall's conversation with him, I went on Mr. Collins' Facebook page, pulled up some pictures on his Facebook page that showed this motorcycle in a picture in the background of a picture that had this silver Acura that he was trying to register at DMV, basically showing that you had the silver Acura, there was a black Acura that Mr. Collins and I had talked about that he had just sold recently within a few weeks of that, and behind that black Acura was a picture of this motorcycle that I had been looking for. I took a picture of the picture. With my department cell phone I took a picture of the picture on his Facebook page and showed it to Mr. Collins. He told me he didn't know anything about the motorcycle and he had never seen the motorcycle before. I asked him if he knew what house that was---

THE COURT: I'm sorry, can you say---your voice trailed off a little.

A I'm sorry.

[p.54]

THE COURT: He said what?

A He told me that he had never---he didn't know anything about the motorcycle in the picture that I showed him and that he had never seen the motorcycle before. I asked him if he knew what house it was parked in front of and he told me no.

Q Now, when I ask you Officer Rhodes, and I'm now going to show you a photograph that was previously marked as Commonwealth's Exhibit #1, and I've shown it to defense counsel. Do you recognize what's in this photograph?

A That's the motorcycle that I attempted to stop on the bypass.

Q And this motorcycle is in a driveway. What is this residence?

A It's on Dellmead Avenue. It's twenty-three (23)---2304, and it's a duplex, B, as in boy, Dellmead Avenue.

Q And this is a true and accurate---this particular photograph, is this how the---ultimately we're going to talk about the motorcycle, you finding the motorcycle later on that day. Is this how the motorcycle appeared on September the 10th?

A Yes, it did.

Q Is this how the motorcycle appeared the day it fled from you?

[p.55]

A Yes.

Q And is this how the motorcycle appeared in the Facebook photograph that you saw and that you showed to the defendant?

A Yes, all the same.

Q In addition to that, you said there's a residence on Dellmead Avenue where you found this---the photograph that you showed the defendant from his Facebook page, what did you ultimately learn was that residence, the location of that residence?

A That's where he---my understanding was where he had been staying---

Q I guess my question---I'm sorry, let me rephrase my question. The residence where you found that---

A Yes.

Q ---this motorcycle, is that the same residence that was in his Facebook picture or a different one?

A I'm sorry, that was the same residence, yes, same residence in the Facebook picture as compared to what I saw there and what is depicted here.

Q In Commonwealth's Exhibit #1.

A That's correct.

Q Thank you. So, Officer Rhodes, you take a picture of this photo---you take a picture of this Facebook page, you show it to the defendant, you ask him, do you know

[p.56]

anything about this motorcycle? - and he says, no, and (unintelligible) residence and he says, no, so then do you continue to talk to him about motorcycles?

A Yeah, I asked him how long it had been since he had ridden a motorcycle and he told me a long time. I then asked him, how long was a long time? - and he told me a few months.

Q So, at that point then, having seen the photograph of this residence, and did you have occasion to then go to investigate where that residence might be?

A I did.

Q And, ultimately, where did that investigation take you?

A To Dellmead Avenue.

Q And, in particular, what location at Dellmead Avenue?

A 2304-B Dellmead Avenue.

Q All right, and is that either in the county of Albemarle or within three hundred (300) yards of the county of Albemarle?

A It is within three hundred (300) yards, yes.

Q So, you arrive at that location and when you arrive at that location, what do you see at that location?

A When I arrived, from the street, still seated in my car, I could see a motorcycle---it was obviously a

[p.57]

motorcycle that was covered up by a white cover. It was in the driveway behind a silver Toyota 4Runner and it was parked---appeared to be parked in the exact same spot, exact same angle as the photograph that I observed in the Facebook page of this residence.

Q And could you see any of the---what appeared to be a motorcycle at all?

A You could see the bottom part of the wheels. The wheels were chrome, like I said before, both the wheels, all the wheels were chrome. I could see the bottom part of about half, maybe a half or to a quarter of the wheels that were chrome sticking out from underneath the cover, which matched the description of the motorcycle I had been looking for from July 24---July 25th.

Q So, at that point then what did you do?

A I then went over to the motorcycle and I---well, before I did anything I actually went to the sidewalk and took a photograph with my phone of what the motorcycle looked like while I was standing on the sidewalk. Then I went---proceeded over to the motorcycle and pulled the cover up off of the motorcycle to investigate further to locate a VIN number or tag number or something like that.

Q And tell the Court, please, as you examined it, what did you find when you examined it?

[p.58]

MR. WEBER: Your Honor, just for the record I'm going to object based upon the hearing we had the other day, and I know the Court overruled us, but I just want to make a timely objection to make sure that any evidence that comes in from this point about that motorcycle is still under that objection.

THE COURT: So noted, Mr. Weber. You may continue, Officer Rhodes.

A I looked at the tag number on that motorcycle, and that tag number that was on the motorcycle is not the same tag number that was on the motorcycle the day I tried to stop it in July. I ran that tag through DMV, and it came back to an address out of Waynesboro on a 2004 Kawasaki that was showing a disposition of being sold. The motorcycle was identical to the motorcycle I had seen within just a few feet of my vehicle on July 25th. I knew with 100% certainty that that was the same motorcycle that day. It's very unique. It's stretched out. The swing arm in the back is chrome and it's stretched out. A lot of after-market parts have been put on the motorcycle, so it's not a standard motorcycle that you'd buy off the showroom floor necessarily. The chrome wheels, all the---it had very distinctive characteristics about it.

Q In addition to that, did you obtain the VIN number on the vehicle, on the motorcycle?

[p.59]

A I did, yes, I did.

Q And what happened as you investigated the VIN number?

A I ran the VIN number through the national computer, and it came back as stolen out of New York.

Q So, you've now looked at this motorcycle and, in particular, at this point then, again, is that the same motorcycle in this picture, Commonwealth's Exhibit #1?

A Yes, it is.

Q I'd ask for the admission of Commonwealth's Exhibit 1 at this time.

THE COURT: And the Court will note the continuing objection---

MR. WEBER: Ongoing objection.

THE COURT: ---by Mr. Weber. Eased upon the Court's prior ruling, the Court is going to overrule that objection and admit Commonwealth's Exhibit #1.

(Commonwealth's Exhibit #1 was so marked and received into evidence at this time)

Q So, then at that point, Officer Rhodes, did you continue on the property, or did you step back or do something else? What did you do at that point?

[p.60]

A I actually---believing that Mr. Collins was probably on the way to the residence and I wanted to speak with him, I actually left the residence and waited for him to arrive at the residence there.

Q And, in fact, did you observe him---at some point did you observe him at the residence?

A I didn't observe him there---yeah, eventually I did. I knocked on the door and he came to the door to speak with me.

Q And when he came to the door to speak with you---let me ask you. September 10th, what kind of day was it? Was it cold or was it warm or something different? Was it rainy?

A It was very warm that day. I remember it being actually hot, I would say in the mid-nineties.

Q And when the defendant came to the door, did you notice how he was dressed?

A Yeah, he was wearing a long-sleeved shirt, blue jeans, and tan Timberland-type work boots.

Q Did you recognize those boots? Had you seen boots like that before?

A Yes, the same---the same exact boots that the rider was wearing on the bypass the day I tried to stop the motorcycle on July 25th.

[p.61]

Q So, you knocked on the door, he comes to the door, and you see how he's dressed. Did you speak to him?

A I did.

Q And tell the Court, please, about the conversation you had with him at that point.

A I asked him if he knew anything about the motorcycle. He told me that he didn't know anything about it, and then he changed his story several times throughout our conversation. He told me it was a friend's motorcycle, and eventually he had gotten to the point where he actually---I asked him where he had gotten the motorcycle and he told me that he had bought it from Eric Jones. When I asked him when the last time was he had ridden the motorcycle, he told me about a week ago from his mom's house on Northfields to Dellmead Avenue.

Q Did you then ask him whether he had ever taken it any other place?

A Yes, yeah, I asked him if he had taken it anywhere else and he told me that---initially he told me, no, he hadn't taken it anywhere and then later on he told me that he---once I confronted him with the Jarman's information that it had been taken to Jarman's---the information I had that he had taken it to Jarman's for some work to be done on it, he then told me, right, he admitted then that he

[p.62]

had taken it to Jarman's to get new tires put on the motorcycle after he left his mother's house with it.

Q And did he tell you how recently it was or roughly how recently it was that he had taken the motorcycle to Jarman's to get the titles---to get the titles---to get the tires put on it?

A I'd have to refer back to my notes. It was the same day---he told me it been months since he ridden

at the DMV and then he told me that it had been a few weeks,---

Q Okay.

A ---a few weeks ago when he took it from his mom's house in Northfields and then he went---he's saying then at that point he went from Northfields to Jarman's to get the tires put on it.

Q Now, Officer Rhodes, you had also indicated that when you examined the motorcycle this time, on September the 10th, that it had a tag on it that was different than the tag you had seen before and that this tag came back from another vehicle, so did you ask the defendant about that tag and about the issue about it coming back to another vehicle?

A I did and he told me that it had been on another motorcycle that he had sold.

Q Did he tell you what kind of motorcycle it was or anything about the motorcycle that it was?

[p.63]

A It was a Kawasaki.

Q Did he give you a color or anything?

A I don't recall a color, no.

Q Did he---oh, so at some point then did you arrest him?

A I did.

Q And when you arrested him, did you conduct a search incident to arrest?

A Yes, I did.

Q All right, and pursuant to the search incident to arrest, did you find anything on his person that was notable?

A Yeah, there was a key in one of his pockets and that key then worked the motorcycle. I took the key out of his pocket. it appeared to be a motorcycle key, went over to the motorcycle. The motorcycle has a digital speedometer, a digital readout on it, put the key in the ignition, turned the key on in the ignition or the digital readout and everything came on on the motorcycle as if it had been operated. I didn't start it, but it operated it up to that point.

Q Now, Officer Rhodes, you had indicated, too, also that you had received a response from the National Criminal Information Center regarding the status of the stolen---status of the motorcycle as how it had been stolen.

[p.64]

A That's correct.

Q And so were you able to determine when it was that the motorcycle had been stolen?

A Let me look back. I don't know if I've got a date on here. It had been some time back. I don't remember exactly the year. I don't have it in my report. I could probably find it in some other notes I have, but I don't have it in my report.

Q Let me ask you this, Officer Rhodes. Are we talking about a matter of months or a matter of years?

A Oh, I think it had been a couple years.

Q Okay, and the reporting party, were you in contact with the reporting party?

A I did contact the owner of the---the registered owner of the, I'm sorry, the reporting party that had reported the motorcycle stolen out of New York. I did actually speak with him on the phone. He told me that the motorcycle had been taken some time back and had since been settled by State Farm Insurance.

Q And incidentally, Officer Rhodes, when you spoke to him, did he indicate to you whether the vehicle when it was stolen had a key or not?

A He did, but let me look back. There was no key---there was no key with it when it was stolen.

Q No key with it when it was stolen.

[p.65]

A Correct.

Q Officer Rhodes, did all these events take place here in Albemarle County or, again, (unintelligible) within three hundred (300) yards of Albemarle County?

A Yes, it did.

Q Those are---sorry, the Court's indulgence. Those are all the questions that I have for you, Officer Rhodes, but please answer any questions that Mr. Weber might have for you.

THE COURT: Cross-examination.

MR. WEBER: (Inaudible) the photograph of the (inaudible)?

MR. CASEY: The one that I just moved in?

MR. WEBER: No, the one with the eluding.

MR. CASEY: Oh, you know, that's part of the evidence from the---so you would have to get it from the Court, I'm sorry.

MR. WEBER: Okay.

THE COURT: What would you like, Mr. Weber?

MR. WEBER: There was a photograph of the motorcycle racing away from Officer Rhodes.

MR. CASEY: From the motion to suppress.

THE COURT: Yes.

MR. WEBER: I'd like to get that if I could.

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CROSS-EXAMINATION

By: Mr. Weber

Q Officer Rhodes, you indicated that you heard Mr. Collins' name on the police radio regarding an incident that was going on at DMV, is that right?

A That's correct.

Q And you went over there to investigate the eluding charge, is that right?

A That's right.

Q You were not dispatched to deal with the other issue.

A No, no, sir, that's right.

Q The other issue was registering a silver Acura, ---

A That's right.

Q ---is that right? And that, too, came back stolen.

A That's correct.

Q Okay. Later that day you determined that car was not stolen, is that right?

A That's right.

Q All right, so that's off the table, but at the time when he was up there at DMV, he's dealing with probably at least four different officers up there, is that right?

[p.67]

D. Rhodes - Cross

A Somewhere in that neighborhood, yes, sir.

Q And focused primarily on the issue of this Acura being stolen, is that right?

A Well, we talked---we talked about a whole gamut of things, but, yes.

Q Okay, so you go up there and you want to talk to him about an eluding issue that occurred on July the 25th.

A That's correct.

Q And you went up there with Officer McCall. Did he arrive separately or---

A Separately, yes, sir.

Q Okay, but you and he had talked before about the eluding that occurred with him, is that right?

A simultaneously, but, yes, yes, we had talked before that.

Q Different eluding incidents---

A Right.

Q ---but his incident was on June the 4th.

A That's correct.

Q Yours was on July the 25th, is that right?

A That's correct.

Q That's your recollection, those two dates, June 4th and July the 25th, is that right?

[p.68]

A As far as I know, yes. I'm not a 100% sure of his date, but I believe that sounds correct. I'm not a 100% sure of that but that sounds right.

Q All right. Now, the---I'm going to show you what was marked as Defense Exhibit 1, and it was admitted back last week during the hearing on this matter. Do you recognize that photo?

A I do.

Q Could you tell the Court what that photo is?

A That's a picture of a paused video on a computer, probably at the police department, I'm not sure where it was where I played it and took that picture, but that's a video, my in-car video paused and then me taking a photograph of that paused video.

Q All right, so my question for you is, when you went up there to the DMV, did you show him that photograph?

A Yes, I did, on my phone. Yes, I did.

Q You did.

A Uh-huh (indicating yes).

Q You showed them the photograph and you told him you were investigating an eluding charge on a motorcycle and you showed him that photograph, is that right?

A That's correct. That's right.

Q Okay. Now, you're pretty thorough in writing your reports, right?

[p.69]

A Uh-huh (indicating yes).

Q Pretty thorough when you testify here in court, is that right?

A Uh-huh (indicating yes), correct.

Q Okay. In your report you describe going back to your car and getting Facebook photos.

A It wasn't my car, but, yes, I went to a vehicle, yes.

Q But you describe getting Facebook photos---

A That's right.

Q ---and you took them on your phone and you showed him those photos, is that right?

A That's correct.

Q And then in your report you mention that you showed him the photos from the Facebook page.

A That's correct.

Q Okay, and then you ascribe to him certain statements he made about motorcycles,---

A Right.

Q ---is that right? Okay, but in your report you never mentioned that you had showed him that photograph, did you?

A No, I didn't.

Q You didn't put that in your report.

A Right.

[p.70]

Q Okay, but that's what he was responding to saying, I was not---that's not me. I was not eluding, is that right?

A Presumably, yes.

Q Okay, and you also testified in at preliminary hearing in the General District Court, is that right?

A That's correct.

Q You testified consistent with what's in your report.

A Correct.

Q Okay, and you testified about showing him the Facebook photos. The Facebook photos were a still photograph around---of Dellmead, is that right?

A That's correct.

Q Okay.

A It turned out to be, yes.

Q Okay, and had the black Acura in one photograph and had the silver Acura in another photograph, is that right?

A Yeah, one photograph actually had both vehicles---had both vehicles in one photograph.

Q You think both of those vehicles were in one photograph?

A Yes.

Q You're absolutely certain?

[p.71]

A Pretty certain. I'd have to look back at the photographs that I entered into evidence, but I'm pretty certain, yes.

Q Okay. I just want to make sure, but you ascertained that from the photograph. You didn't see those vehicles there that day.

A No, I didn't see either one of those vehicles there, but what I'm saying is the photograph---you're asking about a photograph and the photograph that you're asking me about you said had one of those vehicles. I'm saying that one of those photographs had both vehicles in it.

Q I gotcha, okay. What I'm getting at is at the General District Court, you also never mentioned that you had showed him that photograph, did you?

A I don't recall, I'm not sure.

Q The first time you mentioned---the first time anybody ever knew that that photograph was shown to Mr. Collins at DMV and he was responding to that photograph was when I cross-examined you one week ago, is that right?

THE COURT: Repeat your question, Mr. Weber.

Q I'm asking---

THE COURT: The first time---

Q The first time that anybody's ever known publicly that that photograph was shown to him was when I cross-examined him one week ago in this court.

[p.72]

THE COURT: The picture that is now in front of the officer.

Q That is correct, the picture of the eluding.

THE COURT: Thank you.

A I don't recall. I can't recall whether I said it in General District Court or not. I'm not sure. I did show him the photograph, but I don't recall if I said that in General District Court or not.

Q If I showed you the entire transcript, would you want to read the transcript?

A I'd be more than happy to read the transcript, but I'm telling you I don't remember if I said that or not.

Q Okay. You were trying to get him to admit that he was eluding, were you not?

A Sure.

Q That's what you wanted to do.

A Absolutely.

Q That's what you were pressing him on.

A Absolutely. I was doing a police investigation. That's exactly right.

Q All right, and when you confronted him at Dellmead, now you've got him confronted with the motorcycle. You're still pressing him on the eluding, aren't you?

A Yeah, absolutely.

[p.73]

Q Okay, in fact, it took some time before you even figured out that that motorcycle was stolen, right?

A Sure, I had to confirm that.

Q You had to confirm that so what you're pressing him on is the eluding charge, and he's responding---

A I'm not sure of your—I don't understand your question.

Q You're pressing him on an eluding charge, in other words, you're telling him that you want him to admit that he was eluding.

A I did ask him that, yes, and yes.

Q Okay, so when you---you arrested him, is that right?

A That's correct.

Q Okay, and eventually you realize this is the same day, that you've been to DMV, been charged with or alleged to have tried to register a motor vehicle that was stolen, is that right?

A Correct.

Q And he's got you on his back alleging that's he's eluding him, that he was eluding you, is that right?

A Okay.

Q Okay, fair enough?

A Okay.

[p.74]

Q Now, you arrested him and had you revealed to him prior to that arrest that that motorcycle was stolen?

A I don't understand your question.

Q Isn't it true that you arrested him and Mr. Collins says, for what?

A I don't believe so.

Q And you said, for receiving stolen property, isn't that right?

A I don't recall the whole---the exact events and how that all occurred, but I told him he was under arrest.

Q Do you remember saying that---but I just got word that the motor vehicle wasn't stolen. Did you say those words?

A I don't recall that.

Q You don't recall that.

A Are you saying---you're talking about the motor vehicle. Are you speaking of the motorcycle or---

Q I'm talking about---I'm talking about his comment when you arrested him.

A I don't understand your question is what I'm trying to get at.

Q The question is---

A Are you talking about the motorcycle or the motor vehicle at DMV? That's why I don't understand what you're saying.

[p.75]

Q Okay, I'm talking about the arrest.

A Okay.

Q Okay, you said, put your hands behind your back, you're under arrest.

A Right.

Q And he says, for what? And you said, for receiving stolen property.

A Right.

Q Is that right?

A It sounds right.

Q And he said---isn't it true that he said, but the motor vehicle, I just got word it was not stolen.

A I don't recall what he said at that point.

Q You don't recall him saying that?

A I don't recall what he said at that point.

Q Did you then tell him that it was for the motorcycle, not the motor vehicle?

A Sure I would have, absolutely.

Q Okay, so that's when you told him that it was the motorcycle, not the motor vehicle.

A Sure, absolutely.

Q All right. You didn't tell him that it was---that the motorcycle was stolen prior to putting handcuffs on him and arresting him, is that right?

A I don't think so, no.

[p.76]

Q Okay. Now, we had talked earlier, and you had talked about, you know, the investigation of trying to develop suspects for this---for the eluding charge and, ultimately, you ended up on September 10th, you developed Mr. Collins as a suspect in the eluding charge, is that right?

A I developed Mr. collins as a suspect in the eluding charge prior to September 10th. That wasn't---

Q Right.

A It was much prior to that.

Q I understand that, and I asked you in the hearing last week if you had gotten that information from Eric Jones, is that right? You said no.

A Right, I did not.

Q So when you first spoke to Eric Jones, Eric Jones did not tell you that he sold the motorcycle to Ryan Collins.

A I did not speak to Eric Jones myself. Another officer spoke with him. I never spoke with him until later.

Q Did the information that he sold it to Ryan Collins come to you via the other officer?

A It did. Yes, it did.

Q Did he tell---

MR. CASEY: I would object to this as outside of the scope, and it's---I don't know what the relevance would

[p.77]

be as far as cross-examination, Your Honor. If he wants to put on evidence in his case-in-chief, that might be a different issue, but---

Q Your Honor, part of it has to do with what Mr. Jones said.

THE COURT: But if Mr. Jones, though, didn't say it to this officer, correct?

Q I'm saying that he---he said he talked to Mr. Jones prior to the September 10th, is that true?

A I spoke with Mr. Jones before Sept, let's see. I don't remember when I spoke with him. I did speak with him, but I don't recall whether it was before September 10th or after Mr. Collins.

Q How many times did you speak to Jones?

A I think one time as far as I recall at the wrecker yard.

Q Okay, so you didn't speak to him before September 10th, is that right?

A I don't believe so, no. I don't remember the exact date, but I can't recall for sure. I can't remember if it was, see, I think I spoke with him after the arrest was made to try to track the vehicle back where it came from.

Q Well, let's go back.

THE COURT: So, now I'm going to sustain Mr.

[p.78]

Casey's objection. Well, I take that back. Because this is going back to establishing the bike was stolen from New York, I'm going to grant some leeway at this point, though Mr. Casey is correct. He did not get into the detail of the conversation with Mr. Jones, but you may continue, Mr. Weber.

Q On July 25th, you ran the tag.

A That's correct.

Q And the tag came back no longer active.

A Correct, not on file.

Q And you found Eric Jones associated with that tag number through your independent database called PISTOL, is that right?

A That's correct, that's right.

Q Okay, and you said that came back associated with Jones from several years prior?

A I don't remember exactly the exact amount of time in the past, but, yes, prior to July 25th. I don't remember the exact time, but, yes, it had been a couple years I think as best I recall.

Q So, a couple of years, though. Not---it wasn't, like, a couple of months.

A Yeah, yeah, I believe it was a couple years, best I can recall, but that's been awhile.

[p.79]

Q So, that tag is associated with Eric Jones for at least a couple of years prior to September---or July 25th.

A Let me make sure I stated correctly. He was stopped with that tag on another motorcycle a few years prior to that. I don't know how long the association was with Mr. Jones after that stop. There's no other information after that. I'm just making sure that you understand it was prior to that. A few years prior to that he was stopped on a motorcycle with that. I don't know if he got rid of that tag that day or if it was still, you know, I don't know how long he was associated with that tag is what I'm saying.

Q I understand. That tag was associated with Mr. Jones a couple years prior to---

A That's correct.

Q ---July 25th.

A That's right.

Q So, how long after July 25th did you talk to Mr. Jones?

A I don't recall.

Q Did you---obviously, you must have thought he was a suspect in the eluding.

A I didn't---but that's what I'm saying. I didn't personally talk to Mr. Jones. Another officer that

[p.80]

knows Mr. Jones spoke with him. I did not personally talk to him at that point.

Q Okay. Do you remember testifying here just last week---

A Uh-huh (indicating yes), I do.

Q ---about whether you talked to Mr. Jones?

A Uh-huh (indicating yes), I do.

Q Okay. Do you remember me asking you, did you try to develop suspects? - and you said yes.

A Uh-huh (indicating yes).

Q Do you remember me saying, and it would be reasonable based on your investigation of the tag number that Eric Jones was a suspect and you said, sure.

A Uh-huh (indicating yes).

Q You remember that?

THE COURT: I'm sorry, Officer Rhodes, you have to answer yes or no.

A I'm sorry, yes, yes, that's correct.

Q I'm on page 32, by the way, and I said, did you talk to Eric Jones on July 25th? - and you said, I did. He told me he sold the motorcycle, and I said, when did you talk to him? - and you said, well, I don't recall the date. Was it before or after you arrested him? - and you said, both. I've spoken with him after and I've also spoken with him before.

[p.81]

A Correct.

Q This was before and after September 10th.

A That's correct, and I probably misspoke on that that I got the information from another officer and I should have said that. Officer Jameson actually spoke with him after the July 25th because he knows him.

Q When did you misspeak? Did you misspeak last week when you said you spoke to him before, or did you misspeak today when you said you didn't speak to him before September 10th?

A I have spoken with him---the other issue I run into is I've spoken with him because I also have a professional relationship with him because he's a wrecker driver, so I see him on a regular basis, so I don't---it's hard for me to recollect exactly when I spoke with him about the motorcycle, whether it was before this date or after that date and when I spoke with him, because I've spoken with him multiple times since that and I speak with him regularly---

Q I understand that.

A ---because I'm a traffic officer, so I work a lot of crashes. So, as far as being able to say I spoke with him on this date or that date or whenever, I cannot recall exactly when I've spoken with him about the motorcycle---

Q Okay.

[p.82]

A ---and I just can't.

Q But it's fair to say that the first time you spoke to Mr. Jones, he didn't tell you that he had sold the vehicle to Ryan Collins, is that correct?

A I don't, I honestly, I just don't recall. I don't recall.

Q Well, you recall when I asked you if you had gotten the suspect information from Eric Jones, is that right?

A I did not get the suspect information from Eric Jones.

Q You did not.

A No.

Q Okay. When you spoke to Eric Jones, did you speak to him about that eluding charge?

A I don't recall, to be honest with you, I don't recall.

Q Officer Rhodes, you're investigating an eluding charge and the motorcycle comes back---the tag comes back associated with Eric Jones. Did you speak to Eric Jones about eluding or not?

MR. CASEY: Well, again, I think we're getting into content now. Now, we're beyond the situation of stolen property, and now we're on the issue of having the conversation with Mr. Jones. If the concern is, I want a prior

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inconsistent statement or examination of a prior inconsistent statement from Mr. Jones, Mr. Weber is

certainly entitled to do that in his case-in-chief, but that would not---now is not the appropriate time.

Q Your Honor, this all goes to Officer Rhodes' recollection of events. He's conveyed information about what Mr. Collins has said and, obviously, this Court is going to take what he says as true. I'm trying to point out that there's a lot of ambiguity here, ambiguity in the fact that he never mentioned the fact that he had shown him the eluding motorcycle, and now we've got whether he talked with Eric Jones. Eric Jones was clearly a suspect. He knew that. I'm trying to determine, you know, what Eric Jones told him. Eric Jones just testified in this court about certain things, and I think what he says about what Eric Jones says is at least relevant to what Mr. Jones said.

THE COURT: I agree, but in your case-in-chief, not through cross-examination, so the Court's going to sustain the objection, but we'll order Officer Rhodes to remain so that you can put him on for rebuttal purposes.

Q Well, I also want to point out that these are things that he said in court, that he had spoken to him prior to September 10th.

THE COURT: I agree and those---

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Q And that's different from what he has said here today.

THE COURT: I agree.

Q All right.

A I will---I will say, Your Honor, just to apologize. I'm actually sick and have been on medication, so I'm a little bit---I was at the doctor this morning so I do apologize for being somewhat out of it. I do feel somewhat out of it, so, I'm sorry.

Q I want to talk about the, again, the investigation. I had asked you several times about whether you had--- as you developed Mr. Collins as a suspect, did you ever try to go to his house and confront him about the eluding, is that right? Do you remember that?

A I do.

Q Okay, and you said that you---in the case here last week, you said that you had been by his house one time but had never gone to the door.

A That's correct.

Q That's what you said, okay? Now, do you remember testifying at the General District Court?

A I do.

Q Okay. Do you remember I asked you the same sequence of questions.

A Okay.

[p.85]

Q Okay, so---

MR. CASEY: Your Honor, I'm just asking to object to this point so the---what I'm trying to---I think what counsel is trying to do is, again, this is outside the scope of the direct examination, so what counsel is doing now is attempting not to impeach the witness

with a prior inconsistent statement, inconsistent with something he testified to on direct but, instead, is now bringing up an extrinsic fact that the witness has testified to, getting the---confronting the witness with that extrinsic fact and then saying, oh, isn't it---I guess presumably you're going to say, isn't it true you said something different at another time? I don't see how he's permitted to do that. It's not impeachment of what he's testified to on direct. It's some external impeachment of something else.

Q It's impeachment of the investigation, and he said he was investigating an eluding, okay? I think it is proper cross-examination to talk about anything that he did to investigate the eluding charge even if it means pointing out some prior inconsistent statements. He testified he's investigating. That's proper cross-examination.

THE COURT: I'm looking at my notes and he talked about the back story, so he gave that explanation, and then it went almost immediately into the conversation with the defendant on the day that he was at DMV and then the time

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that he was thereafter at the house. I'm going to overrule the objection, but on a limited basis. So, you may ask your question.

Q Do you recall me asking the same sequence of questions about visiting Mr. Collins' house as part of this investigation in the General District Court at the preliminary hearing?

A I recall you asking me that, yes.

Q Okay. Do you recall me saying on July 25th up through September 10th, did you ever attempt to go visit him at his house?

A Yes.

Q Do you remember you saying several attempts, yeah?

A Right.

Q Okay, and then I said, did you ever, and then you cut me off and you said, never---we went by the house and there was never anybody there. Nobody would come to the door, and then you said, I didn't personally do that. I did that one time and another officer did it on an evening shift one time.

A That's correct.

Q Okay, and then I said---I questioned again. So, you're saying that from July 25th to September 10th you went by several times to his house and nobody was there, and

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you said, I went by, drove by there twice, I went one time to the door and another officer went one time to the door, I think it was once or twice. Do you recall those answers?

A Something like that, yeah, sounds right.

Q And you're saying---okay, and you were saying nobody was there. We never---I don't know if anybody was there or not, but there was no response.

A Okay.

Q So, in the General District Court you said you drove by there once and you went to the door once.

A Okay.

Q And last week you said I never went to the door, so which is it? Did you go to the door or you didn't go to the door?

A I don't recall, to be honest with you, I just don't recall. I know Officer Hooper went by there a couple of times for me. I went---I believe I went to the door one time. I drove, made several loops through the neighborhood looking for the motorcycle, trying to catch the motorcycle outside or somewhere I could see it, and I recall going to the door, but I don't remember the sequence of events of how many times or who went and all that. I don't remember that.

Q This all occurred between July 25th and September 10th, though?

A Correct.

[p.88]

Q Okay.

A Yeah.

Q All right. You also testified here that you, while you were talking to Mr. Collins at DMV, you went back to your vehicle or somebody's vehicle---

A Uh-huh.

Q ---and you took photographs from his Facebook page,---

A That's correct.

Q ---is that right? And those pictures that were on his Facebook were there on September 10th, ---

A That's correct.

Q ---is that right? Because you took photographs of them and showed him there on September 10th, ---

A Right.

Q ---is that right? Now, that, too, is different from what you testified to in the General District Court, is it not?

A At some point in time they had been taken down from his Facebook page, and I think that's what you're alluding to. They had been taken down from his Facebook page, and I'm not sure when that was or what timeframe that was. I was given information by a third party that they were taken down, so I don't know---they were there on September 10th and I don't know where they were prior to that.

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Q Okay. Let me go through the sequence of questions here---

A Okay.

Q ---and see if you can recall those answers, okay? And I asked you, okay, now, you said that while you were having contact with him, you went on his Facebook page and developed information about where the motorcycle was and all that, and I said, you had not done that anytime prior to September 10th, question mark. And you said, I had done that, however, the

pictures were of the information that I had received, I didn't personally see, I didn't personally have access to his Facebook page, but I know somebody that does and the pictures he initially had on his Facebook page, my understanding was that they had been removed right after July 25th. Do you remember saying that?

A Right, yes, that sounds right.

Q Right after July 25th, so (inaudible)

A That's correct.

Q Okay, and what I---and then you would answer, but, no, no, I did not make any attempt to do that between those two dates because they had been removed is what I was told. I didn't have access to his page.

A That's right.

Q You were referring to between the two dates, July 25th and September 10th.

[p.90]

A Okay.

Q Is that right?

A Sure, yeah.

Q Okay, all right, and I said all right, but somebody in your unit did have access to his page, and you said, that's correct. Do you remember that?

A Uh-huh (indicating yes).

Q I said, okay, but you didn't ask that person to check his Facebook page prior to September 10th? - and you said, I had and the pictures had been removed.

A Right.

Q Okay, so prior to September 10th, you told the Court that those pictures had been removed.

A Right.

Q And here you're saying on September 10th the pictures were there.

A No, no. I'm saying prior to the date of September 10th---that's not what I'm saying. What I'm saying is prior to the date of September 10th, I was told they were removed. I personally did not see that information or get that information. That was given to me by a third party. On September10th those pictures were on his Facebook page. When they came back on there, when they were gone, and when they were removed, I couldn't tell you. I don't know that. All I can say is on September 10th those

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pictures were on his Facebook page. When they came off, I don't know.

Q Okay, but you testified that they came off shortly after July 25th, but before September 10th.

A Right. What I'm saying is, though, I know they were there on September 10th, which is what we're speaking of, and I don't know after July 25th I was told, but I cannot personally say that I know that for a fact because that's not my---I didn't see it myself, so all I'm

saying is that the third party told me that those pictures were removed after July 25th, like you said, but I know on September 10th they were there. What happened to them after July 25th and between that time and that September 10th, I don't know.

Q You don't know that those pictures were there on July 25th, do you?

A No, I don't know.

Q You never saw them there.

A No, I did not. I never said that I did, no. I did not say I did.

Q The first time you saw those photos was on September 10th.

A That's correct.

[p.92]

Q Okay. You mentioned that at the time of his arrest he had on jeans, tan work boots, and a long-sleeved shirt, is that right?

A That's correct.

Q And when he was at DMV, he had on that same long-sleeved shirt.

A No, he didn't because he---when I reviewed the video, you can see his sleeve tattoos on both of his arms or at least one of his arms. He has a sleeve tattoo I think on the left arm, I can't recall for sure, but on one arm he's got a large tattoo on his arm.

Q Do we need to show this video, Officer? I watched the video, too, and it's a sweatshirt with a hood.

MR. CASEY: Your Honor, now he's arguing.

THE COURT: I agree.

Q When you confronted him at Dellmead, did he say where he was going?

A No.

Q Did you ask him where he was going?

A I don't recall if I did or not.

Q Did he come to the door in response to your knock, or did he come outside while you were around the motorcycle?

A He came to the door in response to my knock.

Q Do you know what a grudge bike is?

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A A what?

Q A grudge bike?

A I have no idea, never heard of it.

Q You never heard of a grudge bike?

A No, sir.

Q Okay. Let me ask you this. Are racing bikes required to be registered?

A Are racing bikes required to be registered? If they're operated on the highway, they have to be registered.

Q Okay, but if they are operated solely on the racetrack, they are not required to be registered.

A I don't know. That's private property. I'm not sure. I wouldn't think so.

Q Okay. He made no statement that indicated that he knew that bike was stolen.

A No, he did not.

Q Nothing further, Your Honor.

THE COURT: Redirect.

MR. CASEY: No, Your Honor, thank you. The Commonwealth rests.

THE COURT: And may---oh, if you'll step down and wait outside, please. Evidence or motions, Mr. Weber?

MR. WEBER: I have a motion to strike, Your Honor. The legal standard for receiving stolen property is actual knowledge. It's not constructive knowledge. What Mr. Jones

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which is entirely consistent with Mr. Jones either owning the motorcycle two or three years ago with this tag on it or Mr. Jones riding a motorcycle that belonged to somebody else with that tag on it in Waynesboro where everybody seems to agree a lot of racing goes on

and a lot of people ride around on motorcycles, so they're consistent with both. In the light most favorable to the Commonwealth, I would ask the Court to deny the motion to strike.

MR. WEBER: Your Honor, as I pointed out, he's talked about lie after lie after lie and tried to point out on cross-examination that this has to be placed into context. He's being charged with possibly receiving a stolen motor vehicle that he knew was false and it turned out to be false. He's now being charged with eluding and even Officer Rhodes said that he was pushing him on the eluding issue and so, yeah, Mr. Collins was a little bit defensive about that but, you know, he's not obligated to incriminate himself on matters regarding an eluding that he knows nothing about, so while taken independently, and if this was the only evidence the Court had, that if there was an investigation of a stolen vehicle and he's coming in and lying about possession of a stolen vehicle, that's competent evidence, circumstantial evidence to perhaps conclude that he's got a guilty mind, but the investigation had nothing to do with a stolen vehicle and, therefore, any inference about denials of the

[p.100]

vehicle has nothing to do with his knowledge of it being stolen. It has to do with his knowledge of whether he was eluding or not, and even Officer Rhodes testified that that's exactly what he was doing. The idea that it's Mr. Collins that changed the tag is---there is no evidence to suggest that. It's true that it had a tag on it, but Mr. Collins ultimately admitted that he drove the bike from his mother's house to Jarman's to get new tires on it, you know, and over to Dellmead, but---

we'll concede all that's illegal but it is not evidence that he knew the bike was stolen. He's putting the tag on it that's associated with him. When the eluding charge occurred, it's got a tag on it that's never been associated with Mr. Collins. It's associated only with Eric Jones. No one else---no other person's name has ever been raised in association with the tag that occurred on July 25th, so our argument is that the direct evidence is incomplete because even Eric Jones said, I didn't know it was stolen, you know, I may have assumed that it was because it had no title, but I didn't know that and that's what I conveyed to Mr. Collins. It may have been stolen, but I don't know. It's just because it didn't have a title, but he also said a lot of racing bikes have had no title. They are just not street-worthy bikes and they have no title so it's not unusual. It's not even illegal to have a bike with no title. I asked him about grudge bikes.

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Grudge bikes are just those kind of bikes that have no title that are used solely for racing. So, the direct evidence from Jones is insufficient, couple it with the circumstantial evidence, you have to take that into context with what Mr.---of what Officer Rhodes was investigating, and what's on his mind at the time? You know, as I pointed out from Officer McCall, it's been a rough day for him. This is the third time around receiving a stolen motor vehicle, eluding, and now he's charged with receiving a stolen motorcycle and he didn't know it until he got arrested.

THE COURT: But in the light most favorable to the Commonwealth, if he didn't know it until he got arrested, why didn't he tell them, I recognize the

address, oh, the bike is there, as opposed to telling them he didn't know anything or he didn't know anything about that bike and he hadn't ridden a motorcycle?

MR. WEBER: Your Honor, he's being pushed under an eluding charge. That's the issue. He's, clearly, he's obfuscating his knowledge of the bike, but it's not because it was stolen. It's because he was trying to---

THE COURT: Oh, I see. What you're saying is he is not lying about the bike. The lie that he's telling is in order to avoid an eluding charge,---

MR. WEBER: Right.

[p.102]

THE COURT: ---not because he thinks he's being investigated about the bike.

MR. WEBER: Right.

THE COURT: I see. So, I'm going to overrule the motion to strike because it is in the light most favorable to the Commonwealth, so I find in the light most favorable to the Commonwealth, but regardless of why he is lying, he is lying, and he is lying as to the bike and the fact that he knew about the bike, that he knows about the residence, and, therefore, the Court's going to overrule the motion to strike.

MR. WEBER: Okay.

THE COURT: So, defense evidence?

MR. WEBER: Yes, we'll call Kandace Beach.

THE COURT: Kandace Beach? I believe she's outside.

THE BAILIFFF: What's that?

THE COURT: Kandace Beach? Can you call for Kandace Beach?

THE BAILIFF: Okay.

THE COURT: If you will come forward and remain standing at the witness box and raise your right hand.

THE CLERK: (Witness sworn) You may be seated.

[p.103]

K. Beach - Direct

KANDACE BEACH, having been so duly sworn, testified as follows:

DIRECT EXAMINATION

By: Mr. Weber

Q You are Kandace Beach?

A Yes.

Q Can you spell your name for the court reporter?

A It's K-a-n-d-a-c-e and my last name is Beach, B-e-a-c-h.

Q Thank you, and where do you live, Ms. Beach?

A At 2304 Dellmead Lane.

Q Okay, and were you living there on September 10th---

A Yes.

Q ---of last year?

A Uh-huh (indicating yes).

Q And you know the defendant, Ryan Collins?

A Yes.

Q Were you at that time in a romantic relationship with him?

A Yes.

Q Okay. Is he the father of your child?

A Uh-huh (indicating yes).

[p.104]

Q Okay, and on September 10th, had he spent the night with you the night prior?

A Uh-huh (indicating yes).

THE COURT: I'm sorry, you're going to have to answer yes or no.

A Oh, yes, yes, I'm sorry.

Q Okay. Do you recall when you---where were you living before you moved to Dellmead?

A I lived at my mom's house, but I was back and forth between my mom's and Ryan's.

Q And Ryan's house.

A Uh-huh (indicating yes), yeah.

Q Now, his house is on Northfields Circle, is that right?

A Yes.

Q And did you spend nights there?

A Uh-huh (indicating yes).

Q Did you spend a lot of time there?

A Uh-huh (indicating yes).

THE COURT: You have to answer yes or no.

A Oh, I'm sorry, yes.

Q Okay, just answer the questions---

A Okay.

Q ---and speak up. Okay. When did you move to Dellmead?

[p.105]

A It was August 8th was our move-in day.

Q All right, and prior to that, you were living sometimes at your mom's---

A Uh-huh (indicating yes).

Q ---and sometimes at his mom's, but you were over at his mom's house with him a good bit of the time.

A Yeah, uh-huh (indicating yes).

Q Do you recall---let me---can I have that photograph of the motorcycle?

THE COURT: Do you want the---

Q No, this one here. I'm going to show you what is marked as Commonwealth's Exhibit #1 and ask you if you have ever seen that motorcycle before?

A Yes.

Q And where is that motorcycle? Where was that picture taken?

A It's at---at my house on Dellmead.

Q Okay, okay, and when was the first time that you saw that vehicle?

A It was after I moved in Dellmead.

Q After you moved into Dellmead,---

A Uh-huh (indicating yes).

Q ---so you never saw the vehicle at his house at Northfield Circle?

A No.

[p.106]

Q You said you moved in on August the 8th.

A Yes.

Q When was that vehicle brought over to---

A It was probably a week after because Ryan never---we moved in for a good week, and he wasn't there that week so it had to be a week after I moved in, if so.

Q Okay, you remember the day he got arrested, September 10th?

A Yes, uh-huh (indicating yes).

Q Go from that date and go backwards and tell me how long that bike had been there.

A Not long, maybe a week.

Q Maybe a week---

A Yeah, at the most.

Q ---backwards from ---

A Yeah.

Q --- from September 10th, okay. If the motorcycle were parked at his mom's house in plain view, would you have been able to see it?

A Sure, yeah, uh-huh (indicating yes).

Q But you never saw it there?

A No, not that one, no.

Q Thank you. No further questions.

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K. Beach - Cross

CROSS-EXAMINATION

By: Mr. Casey

Q So, you moved into the house on Dellmead on August the 8th, is that correct?

A Uh-huh (indicating yes).

Q And he didn't move in for about a week? He wasn't there at the house or---

A He never actually moved in. He just stayed.

Q He just stayed.

A Yeah.

Q So, during the time that you were living there, he was also staying at---

A Just at his mom's, yeah.

Q His mom's as far as you knew.

A Uh-huh (indicating yes). Well, yeah.

Q So, you were staying there so you assumed he was staying there.

A Well, yeah, I assumed, yeah.

Q You don't know.

A Yeah.

Q Do you know someone named Chevel Harvey?

A I know of Chevel. I don't really know Chevel like that.

Q Okay. Do you know if Mr. Collins used to---did he know Mr. Harvey?

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A Uh-huh (indicating yes).

Q And Mr. Harvey has a residence in---around---his own residence, his own place, as far as you know, right?

A I have no idea. I don't know.

Q You never spent any time with Mr. Collins and Mr. Harvey together?

A No, uh-uh (indicating no).

Q Okay. Those are the questions I have, Judge.

MR. WEBER: Nothing further, Your Honor.

THE COURT: You may step down.

A Thank you.

THE COURT: If you would please remain outside the double doors.

A All right. Thank you.

MR. WEBER: I call Terry Roberts.

THE COURT: Terry Roberts.

MR. WEBER: If I could have that photograph back. It would be easier for her, too.

THE COURT: Yes, you're welcome to hold onto it.

MR. WEBER: (Inaudible)

THE COURT: Oh, I'm sorry.

THE CLERK: (Witness sworn) You may be seated.

THE COURT: Ms. Roberts, if you'll be sure to keep your voice up, please.

MS. ROBERTS: Yes, ma'am.

[p.109]

THE COURT: Thank you.

TERRI ROBERTS, having been so duly sworn, testified as follows:

DIRECT EXAMINATION

By: Mr. Weber

Q Tell your name, please.

A I'm Terri Lynn Roberts.

Q Could you spell your first and last name for the court reporter?

A T-e-r-r-i, R-o-b-e-r-t-s.

Q And what is your relationship to Ryan Collins?

A I'm his mother.

Q And where do you live?

A I live at 103 Northfields Circle, Charlottesville.

Q Albemarle County?

A It's in Albemarle County.

Q How far is that from the Dellmead address? Do you know?

A Two or three---about three or four miles.

Q Okay.

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A I'm assuming.

Q Let me go back to June the 4th of last year. Where was Mr. Collins living at the time?

A At 103 Northfields, at my residence.

Q Okay, and was he under any kind of legal restraint at that point?

A He was home incarcerated.

Q And how long had he been on home incarceration?

A Almost ten months.

Q This was actually a pre-trial incarceration, is that right?

A It was a pre-trial, that's correct.

Q So, how long had it been?

A At least---he was---

Q Almost a year?

A Almost a year he was on house arrest.

Q Okay, and on June the 4th, was he required to be in court?

A Yes.

Q Where?

A Here, the city, I'm sorry, Charlottesville.

Q Charlottesville Circuit Court.

A That's correct.

Q Okay, and he had a trial scheduled that day?

A Yeah, but it was continued.

[p.111]

Q Okay, and did the judge on that day relieve him of his obligation to be on home incarceration?

A Yes.

Q What agency was doing the home electronic monitoring?

A Blue Ridge Services.

Q That's over in Staunton?

A Yeah.

Q And were you required to take him over there to get him off?

A Yes.

Q And did you get him off on June the 4th, or did you wait another day?

A It was the next day, the following day.

Q June the 5th.

A Yes.

Q So, June the 4th he was still on home electronic incarceration.

A Yeah, he was on---yes, he was.

Q Okay, and for almost a year prior to that he was on home electronic incarceration, is that right?

A Yes, the whole year. I paid for it, so yes.

Q He was not allowed to leave the house without permission from Blue Ridge Services, is that right?

A That's right.

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Q And you paid a lot of money to keep him on that.

A I sure did.

Q All right. Now, I'm going to show you what's been marked as Commonwealth's Exhibit #1. Have you ever seen that motorcycle before?

A Maybe once, twice.

Q Was it ever parked at your house at Northfields?

A Yes.

Q Okay. Where was it parked?

A At the end of my driveway. We live in a cul-de-sac so when you come around the cul-de-sac, my driveway is paved and it goes down and there's a fence, so he parked his bike at the end of the driveway---

Q Okay.

A ---which is visible.

Q How long was that bike parked at your house?

A At least a month.

Q A month, and was it in plain view?

A Yes.

Q During that month, did any police officer ever come to your door?

A No.

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Q Could a police officer have come to your door and you not be there and you wouldn't know about it?

A Yeah, I would know about it. I have another son that lives at home. He's twenty-one (21) and he's always there. There's not a time when he's not there.

Q So, if somebody knocked on the door, he would answer it?

A Yeah, he would answer it.

Q Okay, and that motorcycle would have been there---

A Yeah.

Q ---in plain view?

A Yeah, yeah. It's either parked at the end of the driveway or on the cul-de-sac in front of our yard. I mean, it's just, you know, you can't miss it.

Q You never saw any notes on the door---

A No notes.

Q ---to call an officer or anything like that?

A No.

Q On September 10th, you recall that he got arrested.

A Uh-huh (indicating yes).

Q Did you actually go down to the magistrate's office or---

A Well,---

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Q ---or to the jail or someplace when he got arrested?

A Yeah, I tried to see if I could get him out on bond, but because he couldn't get out on bond.

THE COURT: Because why?

A Because he was already---because of the trouble he was already in prior to the motorcycle charges.

Q Okay, so did you encounter Officer Rhodes?

A Well, I encountered Officer Rhodes the following day because he had the car keys that Ryan---to the car that Ryan had---went to DMV to---

Q Did you have a conversation with Officer Rhodes?

A Yes.

Q What did he say?

MR. CASEY: Objection to that unless it's---

Q (Unintelligible), Your Honor. It's not offered for its truth. It's offered to show bias.

THE COURT: Well, how is it bias if it's not true?

Q It just goes to what he said, not the content of the---if he says something, you know, the content of it doesn't have to be true. If he said it, it can be inferred and he's got a bias, whether it's true or not.

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T. Roberts - Cross

THE COURT: I disagree. I would find it would have to be true in order for the Court to find there was a bias, so the Court's going to sustain the hearsay objection.

Q Nothing further, Your Honor.

THE COURT: Cross-examination, Mr. Casey?

CROSS-EXAMINATION

By: Mr. Casey

Q So, the motorcycle when it was in front of your house at Northfields, you couldn't miss it. It was very obvious. You could see it.

A That's correct.

Q And it had been there for at least a month you said, correct?

A Yeah.

THE COURT: And, I'm sorry, a month as of---

A Which month? As in, like, thirty (30) days, from the end of, like, the whole month of August it sat in my driveway, at the end of the driveway, almost the entire

month of August because the tires were bad on it, and I actually was saying something to Ryan about the bike sitting there because it was just sitting there. I wanted him to remove it.

Q And what did he say?

* * *

[p.139]

Court that she saw at Northfields the motorcycle wasn't there. Of course, the defendant's mother, Ms. Roberts, who is working a lot believes it to be there all the time, but she really doesn't know because Ms. Beach tells the Court it was gone. Where was it? Well, it couldn't be with the defendant because Ms. Beach knew the defendant, so it had to be stored somewhere else. The transaction between the defendant and Mr. Jones makes sense because it's stolen property because the defendant knows it's stolen property. We ask that you find in this case that his willful blindness is not a defense, and we ask that you find him guilty.

THE COURT: So, if I can just have a moment, I want to review my notes. (Pause) So, here is the observation of the Court. The Court is going to begin its analysis with the defendant's version of what occurred because if I find those facts to be credible, then there would be doubt as to whether or not the defendant is guilty. As I understand the defense position, Eric Jones actually or likely is the one who committed the eluding charges, and that while the defendant may have bought the bike from Mr. Jones, he bought it in August with no knowledge that the bike was stolen, so assuming this to be true, the Court finds the defendant---would find then that the defendant did buy the bike from Eric

Jones with no title. Clearly from the testimony of Mr. Jones the bike not having a title was a serious

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red flag to him because I believe it was in cross-examination that he mentioned that the very first conversation that he has with Mr. Collins about the bike, he lets him know there is no title because he thinks that the bike is stolen, and it did seem consistent with the rest of his testimony that he did think the bike was stolen. He kept using the phrase interchangeable (sic), I told him it was stolen, and he said I didn't know for sure that it was stolen, so the Court takes he may have implied he knew it was stolen or he may have said, I'm pretty sure that I know that it's stolen. So, then the Court looks at the testimony of the defendant when he is confronted by the officers, and there did appear to be some confusion by Officer Rhodes as to what he remembered, but as was true of defense witnesses, these events happened a while ago. However, the Court would note that Officer McCall's testimony was almost identical to Officer Rhodes' testimony. Officer McCall testified that he responded to the DMV, and after giving the defendant Miranda, he asked him about the motorcycle, and he said the defendant said that he had not owned a motorcycle in a month, that he had not driven any motorcycles, that the last motorcycle in months, the last motorcycle he owned was green and that that was all that he knew. So, if the Court takes that to be true, then the Court looks at the actions of the defendant from those particular statements, and the testimony

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of Ms. Beach was that she had not seen that vehicle before August the 8th, but clearly she had been to the mother's residence. The mother's testimony, I want to make sure that was August the 8th. Ms. Beach said, excuse me, I correct myself. She said she moved to the Dellmead address on August the 8th and he brought it to her home a week later, so somewhere around August the 15th. Ms. Roberts said that the bike had been at her residence for almost, excuse me, her testimony was the bike was parked at her house for at least a month in plain view, which if the Court finds Ms. Beach's testimony to be credible, and it seems like an August the 8th move-in date would certainly be something that would be rememberable (sic), and if the bike is moved there approximately a week later, we're talking about August the 15th, August the 20th maybe, and if Ms. Roberts is correct, and the Court believes her and the house---that the bike had been at her house for a month, that would have made it sometime in the middle of July.

MR. WEBER: Your Honor, I just need to correct one thing.

THE COURT: Yes.

MR. WEBER: The Court said that Ms. Beach testified that it came to Dellmead a week later. I clarified that on cross-examination and I said, remember the date that he got arrested September 10th, and she said, yes, and I

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said, what date prior to that did that bike come there? She said, about a week or a few days more than a week,---

THE COURT: Yes.

MR. WEBER: ---so it was early September when she clarified that it came to Dellmead, not a week after August the 8th.

THE COURT: Thank you.

MR. WEBER: I just want to make sure that the Court is not mis-analyzing what she said. I made that very clear on using September 10th as the date. She backed it up and said about a week, and that's consistent with what she said here at the hearing last week. It's also consistent with the date on the Jarman's---the sheet that was brought in a week ago.

THE COURT: Thank you.

MR. WEBER: Okay.

THE COURT: So, then Ms. Roberts' testimony would be correct that the bike had been at her house, obvious and open, for at least a week, but Ms. Beach never saw it at the Northfields address. The first time she sees it is in September when it's moved to her residence. So, then the Court finds that---if the Court finds that testimony to be credible, that would mean that the defendant wasn't responsible for the eluding charge. If he wasn't responsible for the eluding charge, why would he then lie to the officers to

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the extent that, I didn't have a bike, I haven't had a bike for a month, the last bike I owned was green, and I don't know anything about the Dellmead residence. Why not simply tell the officers, I own that bike, but I got it from Eric Roberts (sic) and, in fact, later on, I believe it was the testimony of Officer Rhodes, when he's speaking to the defendant at the house, the defendant does tell him other statements. He said, I bought the bike, first of all, after saying that he had bought the bike, that he didn't know anything about the bike, then he says that he bought it from a friend and then he says that he buys it from Eric Rhodes (sic), excuse me, Eric Jones, but this explanation about the fact that---oh, the explanation about the fact that, well, I said that I didn't know anything about the bike because I was concerned I would be charged with the eluding never comes up. Never when he's talking to the officer does he say, you-all were questioning me about the eluding charge, and I thought I'd be found guilty of the eluding and I didn't want to be implicated. None of that testimony appears until he's in court today, and it does seem questionable, at the least to the Court, to find that something so significant would not be brought up by the defendant after he is confronted with the fact that the bike is in the residence of---a residence that he is familiar with and it's not green, and he has been driving it and he's even gone to

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the extent of putting a tag on it. And, clearly, the defendant had been with the police officers that day then there had been a question about another vehicle that was thought to be stolen and it was cleared up

that it wasn't stolen, so it would seem to the Court it would only make sense that his statement or his honesty with regards to the car not being stolen would certainly have also been reflected in a bike that he possessed but wasn't driving on for the date of the eluding, so I just find the defendant's explanation of what occurred to be incredible. I think there is a question about having the bike for eighteen hundred dollars ($1,800) or a thousand dollars ($1,000) less than you bought it. The Court would note that Mr. Jones, with all due respect, did not seem as if he would necessarily be financially savvy, and he indicated that he needed the money, and to someone that needs the money, eighteen hundred dollars ($1,800) is a lot of money, so the Court did not find that to be something that would be significant, and, therefore, I find the Commonwealth has met their burden and find the defendant guilty as set forth in the indictment. And, Mr. Weber, your exception to the Court's ruling is noted. So, I believe we need to arraign the defendant on the other charge, correct?

MR. CASEY: Yes, Your Honor.

* * *

COMMONWEALTH EXHIBIT 1
Admitted 5-7-14

VIRGINIA: IN THE CIRCUIT COURT OF THE COUNTY OF ALBEMARLE ON THE CRIMINAL SIDE THEREOF, HELD ON **APRIL 30, 2014.**

PRESENT: HON. **CHERYL V. HIGGINS**

No. 13-672, 13-673

[Filed May 20, 2014]

COMMONWEALTH OF VIRGINIA)
)
vs.)
)
RYAN AUSIN COLLINS)
)

SSN [redacted]**-5118** Sex: male
DOB: [redacted]**/1989** Race: white
STATUS: bail

Case Number	Offense	VCC Code	F/M	Offense Date	Virginia Code Section
13-672	Buy/Receive Stolen Property	LAR-2808-F9	F	09/10/2013	18.2-108
13-673	Alter/forge Certificate Title or Registration	REG-6737-F6	F	09/10/2013	46.2-605

Attorney for the Commonwealth: Elliott Casey

Attorney for the Defendant: Charles Weber

The defendant was present with his attorney.

On motion of the Attorney for the Commonwealth and for reasons stated on the record, it is hereby Ordered that the motion to suppress is denied.

ENTER: /s/Cheryl V. Higgins
JUDGE

DATE: 5-20-14

VIRGINIA: IN THE CIRCUIT COURT OF THE COUNTY OF ALBEMARLE ON THE CRIMINAL SIDE THEREOF, HELD ON **MAY 7, 2014.**

PRESENT: HON. **CHERYL V. HIGGINS**

No. 13-672

[Filed May 20, 2014]

COMMONWEALTH OF VIRGINIA)
)
vs.)
)
RYAN AUSIN COLLINS)
)

SSN [redacted]-5118 Sex: male
DOB: [redacted]/1989 Race: white
STATUS: bail

Case Number	Offense	VCC Code	F/M	Offense Date	Virginia Code Section
13-672	Buy/Receive Stolen Property	LAR-2808-F9	F	09/10/2013	18.2-108

Attorney for the Commonwealth: Elliott Casey

Attorney for the Defendant: Charles Weber

The defendant was present with his attorney.

Whereupon the accused, after private consultation with counsel, and being advised by his

counsel, pleaded not guilty to the indictment, which plea were tendered by the accused in person, and after being advised of his right to trial by jury, the accused in person, knowingly and voluntarily waived trial by jury, and with the concurrence of the Attorney for the Commonwealth and the Court, here entered of record, the Court proceeded to hear and determine the case without the intervention of a jury as provided by law and having heard the evidence and argument of counsel finds the accused guilty as charged in the indictment.

The Attorney for the Commonwealth and the defendant were given the opportunity to present evidence pertaining to sentencing.

Pursuant to the provisions of Virginia Code Section 19.2-298.01, the Court has considered the applicable discretionary sentencing guidelines and the guidelines worksheets.

Before pronouncing the sentence, the Court inquired if the defendant desired to make a statement and if the defendant desired to advance any reasons why judgment should not be pronounced.

The Court SENTENCED the defendant to incarceration with the Virginia Department of Corrections for the term of ***three years.*** The Court SUSPENDED ***all but two months*** of the sentence.

SENTENCING SUMMARY:

TOTAL SENTENCE IMPOSED: ***three years***

TOTAL SENTENCE SUSPENDED: ***all but two months (The Court finds that the defendant has previously served the two months sentence)***

The suspended portion of the defendant's sentence was suspended on the following conditions:

GOOD BEHAVIOR. The defendant shall be of good behavior and not violate any penal laws of this Commonwealth or any of its political subdivisions for the term of three years.

NO CONTACT. The defendant shall have no contact whatsoever with the person or property of Eric Jones.

COURT COSTS. The defendant shall pay Court costs.

This sentence shall run ***consecutively*** to any other sentences imposed.

The Court certifies that at all times during the trial of this case the defendant was personally present and counsel for the defendant was personally present.

ENTER: /s/Cheryl V. Higgins
JUDGE

DATE: 5-20-14

2015 WL 4977971 (Va.App.)

COURT OF APPEALS OF VIRGINIA

No. 1096-14-2

[Filed January 28, 2015]

RYAN AUSTIN COLLINS,	)
	)
Appellant,	)
	)
v.	)
	)
COMMONWEALTH OF VIRGINIA,	)
	)
Appellee.	)
	)

OPENING BRIEF OF APPELLANT

Charles L. Weber, Jr.
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for appellant

* * *

[*Tables Omitted in the Printing of this Appendix*]

ASSIGNMENTS OF ERROR

1. The trial court erred in denying Collins' motion to suppress the evidence related to the motorcycle because the officer illegally trespassed onto private property for purpose of conducting a search in violation of his Fourth Amendment right to be free of unreasonable searches and seizures. (J.A. 118-121)

2. The trial court erred in denying Collins' motion to strike the evidence and finding him guilty because the evidence was insufficient as a matter of law to prove that he had actual knowledge that the motorcycle was stolen. (J.A. 215-224, 261-266)

NATURE OF THE CASE AND MATERIAL PROCEEDINGS IN THE TRIAL COURT

On September 10, 2014, the defendant-appellant, Ryan Austin Collins, was arrested and charged on a warrant with receiving stolen goods having a value of $200.00 or more in violation of Virginia Code § 18.2-108.

On October 17, 2013, the General District Court for Albemarle County found probable cause that Collins had committed the offense and certified the matter to the grand jury.

On December 2, 2013, the grand jury for Albemarle County returned an indictment for the felony offense of receiving stolen goods as charged on the warrant.

On December 18, 2013, Collins filed a motion to suppress all evidence in the case on the grounds that the search and seizure of the evidence was in violation

of his Fourth Amendment rights to be free of unreasonable searches and seizures.

On April 30, 2014, the Circuit Court of Albemarle County, upon evidence and argument of counsel, denied his motion to suppress.

On May 7, 2014, Collins was tried by a judge sitting without a jury and was found guilty as charged in the indictment. Final judgment was entered May 20, 2014.

Mr. Collins filed a timely notice of appeal.

On December 19, 2014, the Court of Appeals granted this appeal.

STATEMENT OF FACTS

On September 10, 2013, Collins was temporarily detained at the Department of Motor Vehicles (DMV) in Albemarle County for attempting to register a motor vehicle (automobile) which had been reported stolen (J.A. 172-172, 188). It was later discovered that the vehicle had not, in fact, been stolen and this matter is unrelated to the present charge (J.A. 188).

However, during his detention at DMV, Officers Rhodes and McCall of the Albemarle County Police Department, having heard Collins name mentioned on the police radio, proceeded to DMV for the purpose of questioning him about two suspected, but unrelated, instances of eluding while operating a motorcycle (J.A. 162, 173-175). The dates of these incidents were June 4, 2013 involving Officer McCall and July 25, 2013 involving Officer Rhodes respectively (J.A. 85-86, 165-166, 189-190).

During the July eluding incident, Officer Rhodes had recorded the licence plate number on the eluding motorcycle (J.A. 174). DMV records indicated that the license plate was inactive (J.A. 174). Officer Rhodes then checked a local police database (known as PISTOL) and the license plate had been associated with an earlier incident involving Eric Jones (J.A. 174).

At the pre-trial hearing, Officer Rhodes testified that he had spoken to Jones several times but he could not recall the dates (J.A. 93). He stated that spoke to Jones after July 25, 2013 (the date of the eluding incident) and both before and after September 10, 2013 (the date of Collins' arrest) (J.A. 93). Jones told Officer Rhodes that he had sold the motorcycle; however, Officer Rhodes stated Jones had been difficult to contact and that he had received information linking Collins to the motorcycle from a source other than Jones (J.A. 93-94).

Officer Rhodes had recorded the eluding incident on a video device installed in his police vehicle and subsequently took a still shot of one frame of the video (J.A.190, 129).

While still at DMV, Collins was shown the aforementioned still shot which was a photograph of a person on a motorcycle allegedly speeding away from a police vehicle (J.A. 190, 129). Collins denied all knowledge of this or any other eluding incident (J.A. 190-192).

While Officer McCall spoke to Collins, Officer Rhodes went to a police vehicle and took some photographs of Collins Facebook page with his phone (J.A. 175). Another unidentified police officer had

access to his Facebook page and permitted Officer Rhodes to photograph it (J.A. 88). One photograph showed a motorcycle, similar to the one Officer Rhodes had encountered, parked at residence in the City of Charlottesville (J.A. 125). A second photograph showed that same residence with a picture of a silver Accura similar to the one Collins was attempting to register at DMV (J.A. 124). Officer Rhodes then showed the photographs of the Facebook page to Collins who, according to Officer Rhodes, denied all knowledge of the motorcycle (J.A. 175).

Officer Rhodes, through other sources, had developed information that a motorcycle similar to the one used to elude the police might be located at an address on Dellmead Lane in the City of Charlottesville (J.A. 178). Upon arrival at that address, Officer Rhodes saw a motorcycle parked in a private driveway and covered with a tarp (J.A. 178-179). The outline of the motorcycle was similar to the one he had seen on July 25, 2013 and he suspected that it might be the same one (J.A. 179).

Without the consent of anyone residing at the property, Officer Rhodes proceeded onto private property, removed the tarp, examined the motorcycle and recorded both the license plate number and the Vehicle Identification Number (VIN) (J.A. 90-91, 101, 179). The licence plate was not the same one that was on the motorcycle during the eluding incident (J.A. 180). However, DMV records revealed that the licence plate was associated with the different motorcycle and that the VIN was associated with a motorcycle that had been reported stolen out of New York several years prior to this date (J.A. 180-181, 186).

Officer Rhodes set up surveillance of the residence while he developed further evidence (J.A. 182). Later he proceeded to the front door to talk to the resident(s) (J.A. 182). Collins answered the door (J.A. 214).

Collins initially denied knowledge of the motorcycle but later admitted that he had purchased the motorcycle from Eric Jones and that he had recently driven it from his mother's house to Jarman's Sportscycles to get new tires and then to Dellmead Lane (J.A. 183-184). Officer Rhodes then placed Collins under arrest for receiving stolen property (J.A. 185, 197). Officer Rhodes stated that he did not inform Collins that the motorcycle was reported stolen until after he placed him under arrest (J.A. 197).

At a pre-trial hearing, Officer Rhodes justified his trespass onto private property by saying that (a) he needed to verify that this motorcycle was in fact the same one he had encountered during the eluding incident of July 25, 2013; (b) a motorcycle is movable; (c) he needed to verify the owner of the vehicle and whether the owner lived at that address; (d) he needed to verify whether the motorcycle was properly registered; (e) he needed to verify whether the motorcycle was properly insured; (f) he needed to verify whether the operator of the motorcycle was properly licensed to do so (J.A. 97-98). He admitted, however, that the motorcycle itself is not contraband (J.A. 98).

He also admitted that, even after examining the motorcycle and determining all of the foregoing facts related to the motorcycle, he still had no probable cause to charge Collins with eluding (J.A. 98).

Officer McCall testified at trial that he, too, responded to DMV to speak with Collins (J.A. 161-162). He admitted that he did not know Collins before that day but recognized his name on the police radio (J.A. 161). Initially he spoke to Collins about the automobile that he was trying to register at DMV but eventually began to talk to him about an eluding incident on Emmett St that involved a motorcycle (J.A. 163). He told Collins that he thought he was the driver of the motorcycle (J.A. 163). Collins responded by saying that he had not owned a motorcycle in months, had not driven one in months and that he was not the driver (J.A. 163). Collins stated that the last motorcycle he had owned was green (J.A. 164). Officer McCall stated that he was present when a motorcycle was located on Dellmead Avenue but had no interaction with Collins at that time (J.A. 164).

Officer McCall could not recall the exact date of the eluding incident but admitted speaking about it with Officer Rhodes and further admitted that the date could have been June 4, 2014 (J.A. 165-166). He said the motorcycle that eluded him was similar to the one described by Officer Rhodes but he could not be sure if it was the same one (J.A. 170). He also stated that the person who had eluded him was dark-skinned (J.A. 170-171.

Officer McCall may have transported Collins after his arrest and knew that he was in the back seat of his patrol car at some point (J.A. 168). He admitted that Collins had originally been accused of receiving a stolen automobile and that had later been interrogated and accused of eluding and that he finally was arrested by Officer Rhodes for receiving a stolen motorcycle (J.A.

168-179). He stated that Collins never admitted knowing that the motorcycle was stolen and that if he had, he would have made a note of it (J.A. 169). He acknowledged that it had been a rough day for Collins having been accused of three crimes (J.A. 168-170).

Eric Jones testified that he bought the motorcycle some time in March or April of 2013 (J.A. 139-140). He received it without a title and thought that it had possibly been stolen (J.A. 140). On cross examination, he admitted that he was never told it was stolen when he bought it but that he just assumed as much because it did not have a title (J.A. 146). He had paid $2800 for the bike and sold it to Collins for $1800 (J.A. 141, 144-145). He claimed that he sold it some time around the end of April 2013 (J.A, 143). The motorcycle had a key when he bought it and when he sold it (J.A. 142).

When he sold the bike to Collins, he told him that he thought it might have been stolen because it had no title but he never told him that he knew the bike had been stolen (J.A. 141, 153-154).

Jones had owned the motorcycle for about a month and half during which time he regularly towed it a raceway in Waynesboro for the purpose of racing it on a race track (J.A. 141, 143, 145-146). He said that he races many bikes every year and knew that racing bikes do not always have titles (J.A. 146-147). He knew that the term "grudge bike" means one that is used for racing only and not legal to put on the street (J.A. 147). A grudge bike could be one that has incurred frame damage (J.A. 148). Yet he testified that Collins wanted to put a new frame on it for the purpose of turning in into a racing bike (J.A. 142).

Jones admitted that he had previously been convicted of a crime involving lying, cheating or stealing (J.A. 148).

Jones testified that he had contacted Collins, not vice versa, to advise him that he wanted to sell the bike and to see if Collins was interested in purchasing it (J.A. 149). He stated that Collins came to his place of employment at FBR Towing on Harris Street in Charlottesville at around lunch time in April to view the bike and negotiate a possible sale (J.A. 150). At that time, Jones was cleaning the bike after the race track ready it for sale (J.A. 151). He testified that there was license tag on the bike which was on the bike when he bought it a month or two previously (J.A. 151-152). No agreement was reached at that time but he later delivered the bike to Collins' residence (J.A. 152-153).

Kandace Beach testified that she moved into the Dellmead residence on August 8, 2013, that Collins was an occasional overnight guest and that he had stayed there the night prior to his arrest on September 10, 2013 (J.A. 225-227). At that time, she was in a romantic relationship with Collins and had given birth to Collins' child (J.A. 225). Before August 8, she lived with her mother but frequently visited Collins at his residence on Northfields Circle (J.A. 226-227). She testified that the first time she had seen the motorcycle was when Collins brought it to her Dellmead residence about a week before his arrest (J.A. 227-228). Prior to August 8, she had not previously seen the motorcycle at his Northfields Circle address (J.A. 227-228).

Terri Roberts, Collins' mother, resides at [redacted] in Albemarle County (J.A. 231). On June 4, 2013, Collins appeared in the Circuit Court of

Charlottesville for a trial which was ultimately continued (J.A. 232). On that date and for about ten (10) months preceding that date, Collins had been on pre-trial home electronic incarceration (HEI) monitored by Blue Ridge Services in Staunton (J.A. 232-233). On June 4, 2013, the circuit court relieved him of his obligation to remain on pre-trial HEI but he was not actually taken off until the following day (J.A. 233).

Roberts recognized the motorcycle and said that it was parked in plain view at the end of her driveway for most of the month of August (J.A. 234-235, 237). She wanted the bike moved but it just sat there because the tires were bad (J.A. 237-238). She said one day he apparently replaced the tires and moved the bike (J.A. 237-238). She also testified that during that month, no police officer came to her residence to speak to Collins or inquire about the motorcycle (J.A. 234-235).

ARGUMENT

I THE TRIAL COURT ERRED IN DENYING COLLINS' MOTION TO SUPPRESS THE EVIDENCE RELATED TO THE MOTORCYCLE BECAUSE THE OFFICER ILLEGALLY TRESPASSED ONTO PRIVATE PROPERTY FOR PURPOSE OF CONDUCTING A SEARCH IN VIOLATION OF HIS FOURTH AMENDMENT RIGHT TO BE FREE OF UNREASONABLE SEARCHES AND SEIZURES

a. Standard of review

On appeal, the circuit courts factual findings in denying a motion to suppress are reviewed for clear error, but the circuit court's application of the law is

subject to de novo review. *Commonwealth v. Quarles,* 283 Va. 214, 720 S.E.2d 84 (2012).

b. *Officer Rhodes illegally trespassed onto private property for the purpose of conducting a search for evidence*

The government's physical intrusion onto an effect for the purpose of obtaining information constitutes a search within the meaning of the Fourth Amendment. *United States v. Jones,* 565 U.S. ___ 101259 (2012). Fourth Amendment jurisprudence applies not only to a reasonable expectation of privacy but also to common law trespass. Id. A police officer may not enter the curtilage of a home simply to conduct a search without a warrant. *Florida v. Jardines,* 569 U.S. ___ 11564 (2013).

In Jones, the U. S. Supreme Court held that the Government's attachment of a GPS device to a vehicle and the use of that device to monitor the vehicle's movements constituted a search under the Fourth Amendment and upheld the suppression of all evidence obtained by the warrantless use of a GPS device. *Jones* at Slip. Op. 1,12. In that case, the vehicle was parked at the defendant's residence at the time the device was attached. Id. The motor vehicle is an effect protected by the Fourth Amendment. Id.

In *Jardines,* the U. S. Supreme Court held that when the government obtains information by physically intruding on the curtilage of a house, a search within the meaning of the Fourth Amendment has undoubtedly occurred. *Jardines* at Slip. Op. 1. In that case, the police had received an unverified tip that marijuana was being grown at Jardines' home. Id.

After a brief period of surveillance, the police entered the curtilage of the home with a drug detecting dog which gave a positive alert for narcotics at the base of the front door. Id. At Slip. Op. 2. The Court upheld the suppression of all evidence holding that the officers had engaged in a Fourth Amendment search unsupported by probable cause. Id. at Slip. Op. 1, 10.

In this case, several facts are uncontested; namely, (1) Officer Rhodes entered into the curtilage of a home without a warrant and without permission of the residents; (2) he did so for the purpose of conducting a search for a particular motorcycle which was parked in the driveway at the residence; (3) he was investigating the crime of eluding; (4) he had received a tip, the source of which was not disclosed, that Collins may have been the driver that had eluded him on July 25, 2013; (5) he physically removed a tarp which was covering the motorcycle noting its appearance and recording the licence tag number and the Vehicle Identification Number; (6) even after verifying that Collins owned the motorcycle, Officer Rhodes had, and still has, no probable cause to arrest him for the crime of eluding; (7) Collins was an invited overnight guest at the residence and had standing to contest the Fourth Amendment violation.

The trial court opined that *Jardines* was not applicable because it could be distinguished on the facts; specifically, that *Jardines* involved the use a drug detecting dog (J.A. 118-121). The court held that Officer Rhodes had probable cause to conduct the search and thus his intrusion onto Collins' property was not unreasonable (J.A. 121).

The trial court erred. As the U. S. Supreme Court said:

> "...when it comes to the Fourth Amendment, the home is first among equals. At the Amendment's "very core" stands "the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." *Silverman v. United States,* 365 U.S. 505, 511 (1961). This right would be of little practical value if the State's agents could stand in a home's porch or side garden and trawl for evidence with impunity... A license may be implied from the habits of the country," notwithstanding the "strict rule of the English common law as to entry upon a close." *McKee v. Gratz,* 260 U.S. 127, 136 (1922) (Holmes, J.). We have accordingly recognized that "the knocker on the front door is treated as an invitation or license to attempt an entry, justifying ingress to the home by solicitors, hawkers and peddlers of all kinds." *Breard v. Alexandria,* 341 U.S. 622, 626 (1951). This implicit license typically permits the visitor to approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave. Complying with the terms of that traditional invitation does not require fine-grained legal knowledge; it is generally managed without incident by the Nation's Girl Scouts and trick-or-treaters. Thus, a police officer not armed with a warrant may approach

> a home and knock, precisely because that is "no more than any private citizen might do."

Jardines, 569 U.S. at Slip. Op. 4, 6.

Officer Rhodes could see the outline of a motorcycle from the street but was unable to determine from that vantage point if it was the same one involved in the eluding incident. At that time, he had no reason to suspect that the motorcycle was stolen. Moreover, even if it proved to be the same motorcycle he had encountered on July 25, he had no reason to believe that identifying the motorcycle would enable him to identify Collins as the driver on that date.

As the U. S. Supreme Court has said,

> "One virtue of the Fourth Amendment's property-rights baseline is that it keeps easy cases easy. That the officers learned what they learned only by physically intruding on Jardines' property to gather evidence is enough to establish that a search occurred."

Jardines, 569 U.S. at Slip. Op. 9.

By this standard, this case is easy. Officer Rhodes trespassed onto private property to search for evidence of a crime. Only after physically intruding on Collins' property did he learn that the motorcycle may have been the same one involved in an earlier eluding incident. But Officer Rhodes knew that the identity of the driver, not the identity of the motorcycle, was the principal reason for his investigation. Even after removing the tarp to search for evidence, he still has not learned and could not have learned who was driving the motorcycle at the time. To this day, Officer

Rhodes is without probable cause to charge Collins with eluding.

Moreover, only after physically intruding on Collins' property did he learn that the motorcycle had been reported stolen. Prior to his intrusion, Officer Rhodes had no suspicion, much less probable cause, to suspect that it had been stolen.

Thus, the trial court erred in holding that Officer Rhodes had probable cause to trespass onto private property to search for evidence of a crime.

c. The emergency exception to the warrant requirement does not apply

Warrantless entry and search of a home or its curtilage require not only probable cause but also exigent circumstances. See, *Warden v. Hayden,* 387 U.S. 294 (1962) (hot pursuit of a suspect armed felon); *Minnesota v. Olsen,* 495 U.S. 91 (1990) (imminent risk of destruction of evidence, escape of the suspect, or danger to police or others); *Brigham City v. Stuart,* 547 U.S. 398 (2006) (police reasonably believe an occupant is seriously injured or in imminent danger); *Washington v. Commonwealth,* 60 Va. App. 427, 728 S.E.2d 521 (2012) (exigent circumstances, coupled with a showing of probable cause of house having been broken into, justified warrantless entry into home); *Verez v. Commonwealth,* 230 Va. 405, 410, 337 S.E.2d 749, 752-53 (1985) (warrantless entries are presumed to be unreasonable, in Fourth Amendment terms, casting upon the police a heavy burden of proving justification by exigent circumstances).

Collins argued that Officer Rhodes had neither probable cause nor exigent circumstances. (J.A. 52-54).

The court held that Officer Rhodes had probable cause to conduct the search but did not address exigent circumstances. (J.A. 121). Thus, the trial court erred in holding that the warrantless intrusion onto private property was reasonable.

In this case, no exigent circumstances existed. None were articulated by Officer Rhodes and none were argued by the Commonwealth.

This was not a "hot pursuit" situation because Officer Rhodes was investigating a crime of eluding which had occurred nearly two monthis prior to this date. There was no risk that evidence would be destroyed because the motorcycle was in plain view and Officer Rhodes had already set up surveillance of the residence to prevent anyone from removing the motorcycle without his knowledge. Nothing about the case or in the testimony suggested that there might be any danger to the police or to others.

Officer Rhodes could easily have complied with the law by knocking on the front door for the purpose of talking to and seeking consent from the residents. Instead of complying with the traditional invitation to "knock and talk," Officer Rhodes trespassed onto the property and removed the tarp which covered the motorcycle. This act exceeded the licence generally accepted for entry onto private property.

Alternatively, he could have sent Officer McCall to the magistrate for a search warrant based on a showing of probable cause to an independent judicial officer. He had already sent Officer McCall on another fact-finding errand to Jarman's Sportcycles. Thus,

Officer McCall was not a critical component of the surveillance operation.

Even if some semblance of probable cause existed, there were no exigent circumstances to justify the trespass onto the curtilage of Collins' home.

Thus, Officer Rhodes' warrantless trespass onto private property to search for evidence without probable cause and exigent circumstances was per se unreasonable and a violation of Collins' rights under the Fourth Amendment of the Constitution of the United States.

d. Conclusion

For the foregoing reasons, this court should find that the trial court erred in denying Collins' motion to suppress evidence related to the motorcycle, reverse his conviction and remand the matter back to the circuit court for further proceedings.

II THE TRIAL COURT ERRED IN DENYING COLLINS' MOTION TO STRIKE THE EVIDENCE AND FINDING HIM GUILTY BECAUSE THE EVIDENCE WAS INSUFFICIENT AS A MATTER OF LAW TO PROVE THAT HE HAD ACTUAL KNOWLEDGE THAT THE MOTORCYCLE WAS STOLEN

a. Standard of review

When examining a challenge to the sufficiency of the evidence, an appellate court must review the evidence in the light most favorable to the prevailing party at trial and consider any reasonable inferences

from the facts proved. *Zimmerman v. Commonwealth*, 266 Va. 384, 386, 585 S.E.2d 538, 539 (2003). The judgment of the trial court is presumed to be correct and will be reversed only upon a showing that it is "plainly wrong or without evidence to support it." Code § 8.01-680; *Jackson v. Commonwealth*, 267 Va. 178, 204, 590 S.E.2d 520, 535 (2004).

b. Summary argument

The crime of larceny by the receipt of stolen goods is defined by Code §18.2-108 which requires knowledge that the goods were stolen as an essential element of the crime. *Lewis v. Commonwealth*, 225 Va. 497, 303 S.E.2d 890 (1983). Absent proof of an admission against interest, the knowledge required by Code § 18.2-108 that the goods received were stolen property must be shown by circumstantial evidence. *Id.*

Collins never admitted that he knew the motorcycle had been stolen. Nor was he in possession of recently stolen property. The judgment of the trial court was plainly wrong because it was based on circumstantial evidence and unreasonable inferences from certain facts that were in evidence.

The bulk of the evidence against Collins came from testimony by Officer Rhodes. Officer Rhodes lied repeatedly under oath and misled the court(s) in several material ways. In fact, he was so thoroughly impeached with his own inconsistent statements that he apologized to the court and blamed them on his being sick.

The trial court acknowledged Officer Rhodes' "confusion" but stated that Officer McCall's testimony was almost identical. As will be shown, this is not the

case. Officer McCall's testimony was quite narrow and he provided a context to Collins' statements that supports Collins' argument and that Officer Rhodes had attempted to obscure.

Moreover, the only evidence that Collins may have even suspected that the motorcycle had been stolen was supplied by Eric Jones. Jones' version of events was clearly self-serving and inconsistent with other known facts as presented in court.

c. Officer Rhodes lied repeatedly under oath and intentionally misled the court(s) in several material ways

First, Officer Rhodes misled the courts regarding his use of photographs to interrogate Collins about the alleged incidents of eluding. As a factual matter, Officer Rhodes first showed Collins the still photo taken from the eluding incident on July 25, 2013 (J.A. 129) and only later showed him two photographs taken of Collins' Facebook page (J.A. 124-125). However, Officer Rhodes, by his own admission, failed to mention the existence of the eluding photo in his reports (to which counsel had access through the open file policy of the Commonwealth's attorney) and did not disclose the existence of the photo during the preliminary hearing in the General District Court on this matter.

The existence of the eluding photo was first revealed publicly during cross-examination of Officer Rhodes at a pre-trial hearing in the Circuit Court on April 30, 2014. The Commonwealth knew of this photograph prior to the pre-trial hearing because the Commonwealth actually provided the copy of the photograph submitted as defense exhibit 1.

Officer Rhodes, by his omissions, clearly intended for the court to infer that every statement attributed to Collins about motorcycles was in response solely to his own Facebook photos and not specifically to the allegation that he was the driver in the eluding photo. This was clearly not the truth. Officer Rhodes failed to reveal the whole truth and failed to testify to the whole truth until confronted on cross-examination.

Second, Officer Rhodes misled the courts regarding when he first became aware of the Facebook photos. After extensive cross-examination at trial, Officer Rhodes admitted that the first time he had seen the photos on Collins' Facebook page was September 10, 2014.

However, during the preliminary hearing in the General District Court, Officer Rhodes had stated the photos of the Silver Accura and the motorcycle were posted on his Facebook page on July 25, 2014 but were subsequently taken down. He specifically stated that he had inquired about them after July 25 and before September 10 but that the photos had been taken down from his Facebook page.

Officer Rhodes clearly intended for the court to infer that (a) Collins was in possession of the motorcycle on July 25, 2013 and (b) he took the photos down from public view on his Facebook page out of consciousness of guilt regarding the eluding charge.

Independent evidence at trial revealed that Collins did not come into possession of the motorcycle until some time in early August (likely on or after August 8), that it was parked in plain view at his residence on Northfields Circle for the remainder of the month of

August and only moved to the address on Dellmead Lane in early September. In fact neither Collins nor his girlfriend resided on Dellmead until after August 8, 2013. Thus, the photographs were not and could not have been posted on his Facebook page on July 25 as asserted by Officer Rhodes under oath.

Third, Officer Rhodes made numerous inconsistent statements regarding his interactions with Jones. On July 25, 2013, Officer Rhodes had reason to suspect that Eric Jones was the driver of the motorcycle involved in the eluding incident. He had already researched the tag number and it was associated with Jones. Officer Rhodes was unable to tell if the driver on July 25, 2013 was white or black. However, he had discussed the matter with Officer McCall and should have known that the driver of the motorcycle on June 4, 2013 was "dark-skinned."[1]

At the preliminary hearing in the General District Court, Officer Rhodes at first stated that he spoke to Jones on July 25, 2013. He later said he could not remember the exact date but it was after July 25 and before September 10. He said that Jones told him he had sold the motorcycle. However, Officer Rhodes stated that Jones was not the source of his information about Collins being the driver on July 25. He said that Jones was very difficult to contact.

At trial, Officer Rhodes denied speaking to Jones before September 10. When pressed on his inconsistent statement, Officer Rhodes admitted that had

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[1] The trial court was able to observe that Jones was black while Collins was white.

mis-spoken, that another officer had spoken to Jones and that he (Rhodes) should have revealed that (J.A. 203). When pressed further about the date that he did speak to Jones, Officer Rhodes stated that he could not recall because he has a professional relationship with Jones as a wrecker driver and sees him on a regular basis (J.A. 203).

After pressing further and pointing out these inconsistencies, Officer Rhodes apologized to the court and blamed his mis-statements on being sick (J.A. 204-206).

Fourth, Officer Rhodes made numerous inconsistent statements about his prior attempts to contact Collins at his residence. Officer Rhodes has had numerous dealings with Collins in the past and knew where he lived on Northfields Circle. Assuming that he and Officer McCall had good reason to suspect that Collins was guilty of eluding them on a motorcycle on July 25 and June 4, 2013 respectively, he would logically make a concerted effort to contact Collins at his home.

At the preliminary hearing, Officer Rhodes stated that (a) he had driven by the house several times, (b) he never saw a motorcycle, (c) he had knocked on the door once, (d) another officer also knocked on the door, (e) no one ever responded at the door.

At the pre-trial hearing in the Circuit Court, Officer Rhodes stated that never attempted to make contact with Collins at his home. He testified then that he had tried to make phone contact with Collins once and drove by his house one time.

When confronted with his inconsistencies he claimed "I don't recall." He then said Officer Hooper

had gone by there several times on his behalf, that he (Rhodes) had made several loops through the neighborhood and then that he did actually go to the door but could not recall how many times.

All of his statements stand in stark contrast to Roberts unimpeached testimony that (a) the motorcycle sat in her driveway in plain view for most of the month of August and (b) that no law enforcement officer ever came to the door looking for her son.

d. Officer McCalls testimony differed from Officer Rhodes' testimony in several material aspects and ultimately supported Collins' argument

Collins argued that Officer Rhodes had exhibited such a bias against him by his misleading omissions and his numerous inconsistent statements that any statement attributed to him by Officer Rhodes should be not given weight as an accurate expression of what he actually said and the context within which the words were spoken. The court acknowledged the argument by noting Officer Rhodes' confusion as to what he remembered but then noted that Officer McCall's testimony was almost identical to Officer Rhodes (J.A. 262). This is inconsistent with the facts as presented at trial.

Officer McCall testified that after speaking to Collins about the automobile that he had attempted to register at DMV, he spoke specifically about the eluding incident on June 4, 2013. He told Collins that he (McCall) believed Collins was the driver and admitted that he was essentially accusing Collins of a crime. He testified that Collins responded to this

particular accusation by saying the "he hadn't owned a motorcycle in months, hadn't driven a motorcycle in months, and that it wasn't him." Collins later said that the last motorcycle he owned was green.

Officer McCall does not testify to any statement that Collins may or may not have made in response to either the eluding photo (which was Officer Rhodes' case) or Facebook photos. In fact, Officer Rhodes had testified that he had taken Facebook photos while Officer McCall was talking to Collins. Thus, all statements attributed to Collins by Officer McCall occurred before Collins was confronted with the photographs from his own Facebook page.

Moreover, Collins knew that on June 4, 2013, he had been present in the Circuit Court of Charlottesville for a scheduled trial and was still under the constraints of home electronic incarceration until the following day. He also knew that he did not own that motorcycle on June 4, 2013. Thus, in his mind, any allegation that he had been driving any motorcycle on June 4, 2013 was clearly false. He was also, at that time, pre-occupied with another false allegation of attempting to register a stolen vehicle.

Collins statements to Officer McCall must be viewed in this context a young man confronted with multiple police officers making multiple false accusations of criminal activity. Yet this is precisely the context that Officer Rhodes attempted to obscure by failing to reveal the existence of the eluding photo and implying that Collins' statements about the motorcycle were solely in response to his own Facebook page photos.

Collins statement about ownership of a motorcycle was certainly not true. He did own a motorcycle but at this stage of the investigation and questioning, it is not clear whether Collins had been shown any photograph of it. Officer McCall mentioned no photographs in his testimony and testified that Collins was responding to his accusation of eluding. Collins, out of self-interest, simply chose to deflect all questions about any motorcycle.

Collins statement that he had not driven a motorcycle in months, while not entirely true, was substantially true at least in the context of a false allegation of eluding which had occurred two months previously. His mother specifically stated that, after the motorcycle was delivered to her house in early August, Collins did not drive it because it needed new tires. He later admitted that he drove the motorcycle in early September from his mother's house to a shop for new tires and then to Dellmead where it was parked. Collins knew that the motorcycle was not registered and in the context of a false allegation of eluding, he was under no obligation to incriminate himself with even a minor traffic infraction.

Finally, Collins' statement that "it wasn't him" was true and there was not a shred of evidence presented at trial to conclude that it was not true. Officer Rhodes admitted that, to this day, he has no probable cause to charge Collins with eluding.

Officer McCall's testimony differed from that of Officer Rhodes in that Officer Rhodes focused on Collins' response to Facebook photos whereas Officer McCall focused on Collins' response to a specific false allegation of eluding without reference to any

photographs. Moreover, Officer McCall was unable to validate anything Officer Rhodes may have said or heard when he confronted Collins at the Dellmead address. The only evidence at trial of Collins' responses to either the Facebook photos or the actual motorcycle at Dellmead came only from Officer Rhodes, not Officer McCall.

Thus, the trial court was plainly wrong to conclude that Officer McCall's testimony was almost identical to that of Officer Rhodes. Every human being when confronted with multiple police officers making multiple accusations that he knows to be false will respond differently. Collins argued that his mis-statements were uttered in response to false allegations of eluding. Officer McCall's testimony supports this claim.

To infer that Collins' statements to Officer McCall are proof that he knew the motorcycle was stolen is unreasonable. To conclude beyond a reasonable doubt, based solely on those statements in the context within which they were uttered, that he knew the motorcycle was stolen is plainly wrong.

e. Jones' testimony was inconsistent with known facts and inherently incredible

Jones testified that he sold the motorcycle to Collins at the end of April and that Collins had inspected it at his work place prior to purchasing it. During this period of time, Collins was on court-ordered home electronic incarceration and could not have visited his place of employment without being reported in violation. Collins introduced evidence to show that he did not purchase the bike until early August.

Jones testified that he had paid $2800 for the bike and sold it less than two months later for only $1800. He further admitted that he later tried to buy it back from Collins. The most logical inference from these facts would be that Jones wanted to get rid of the bike fast because he knew he could get accused of eluding the police. He offered to buy it back later when no one contacted him about the eluding charge.

Jones testified that Collins wanted to put a new frame on the bike in order to convert it to a racing bike. Yet Jones stated that he was already using the bike exclusively as a racing bike. He admitted that a bike with frame damage might not have a title and would not be street legal. A new frame might be necessary in order to convert the bike to one that could be properly titled and registered for street use but it would not be necessary to continue using it as a racing bike. Jones' testimony on this point makes no logical sense.

Jones admitted that he did not know that the bike had been stolen and that he never told Collins that it was stolen. He only assumed that it might have been stolen because it had no title. Jones most likely told Collins that it had no title because it had sustained frame damage and was no longer legal to register it for street use. This would explain why (a) Jones used the bike exclusively for racing, (b) why Collins stated that he would need to replace the frame and (c) why the price was so low.

Jones' testimony, even if taken as true in its entirety, might cause a prudent person to believe that the bike might have been stolen but was insufficient to prove actual knowledge as required by Virginia law.

f. Conclusion

For the foregoing reasons, this court should find that the trial court erred in denying Collins' motion to strike evidence, reverse his conviction and dismiss the indictment against him.

CONCLUSION

The Appellant, Ryan Austin Collins, respectfully prays that, as to the assignments of error, this Honorable Court find that the trial court erred, reverse the judgment of the trial court and either remand the matter back to the trial court for further proceedings consistent with this ruling or dismiss the indictment against him.

2015 WL 4977972 (Va.App.)

COURT OF APPEALS OF VIRGINIA

No. 1096-14-2

[Filed February 19, 2015]

RYAN AUSTIN COLLINS,

Appellant,

v.

COMMONWEALTH OF VIRGINIA,

Appellee.

BRIEF FOR THE COMMONWEALTH

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* * *

[*Tables Omitted in the Printing of this Appendix*]

STATEMENT OF THE CASE

The issues presented in this appeal are whether the police had probable cause to search the motorcycle in the driveway of defendant Ryan Austin Collins's residence without first obtaining a warrant; and whether the evidence was sufficient to sustain his conviction for receiving stolen property.

On April 30, 2014, the Albemarle County Circuit Court denied the defendant's motion to suppress evidence. (App. 118-21, 268). The following week, the trial court, sitting without a jury, convicted Collins of receiving stolen property and sentenced him to three years in prison, with all but two months suspended. (App. 271).

ASSIGNMENTS OF ERROR

I. **THE TRIAL COURT ERRED IN DENYING COLLINS'S MOTION TO SUPPRESS THE EVIDENCE RELATED TO THE MOTORCYCLE BECAUSE THE OFFICER ILLEGALLY TRESPASSED ONTO PRIVATE PROPERTY FOR THE PURPOSE OF CONDUCTING A SEARCH IN VIOLATION OF HIS FOURTH AMENDMENT RIGHT TO BE FREE FROM UNREASONABLE SEARCHES AND SEIZURES.**

II. **THE TRIAL COURT ERRED IN DENYING COLLINS'S MOTION TO STRIKE THE EVIDENCE AND FINDING HIM GUILTY BECAUSE THE EVIDENCE WAS INSUFFICIENT AS A MATTER OF LAW TO PROCE THAT HE HAD ACTUAL**

KNOWLEDGE THAT THE MOTORCYCLE WAS STOLEN.

STATEMENT OF FACTS

SUPPRESSION HEARING

On July 25, 2013, Officer David Rhodes, Albemarle County Police Department, was on patrol and noticed a motorcycle coming from behind him at a high rate of speed. (App. 65-66, 79). Rhodes activated his radar, which indicated the motorcycle was traveling at 100 mph in a posted 55 mph zone. (App. 79). The motorcycle passed him on his left. Rhodes made eye-contact with the driver, but could not identify him because he wore a helmet with a tinted shield. Rhodes activated his emergency equipment and attempted to stop the motorcycle. The motorcycle "took off at a very high rate of speed [exceeding] 140 mph." (App. 80). Rhodes pursued the motorcycle until it drove onto the interstate. Rhodes then stopped the pursuit because the driver "was driving too reckless." (App. 80).

During the incident, Rhodes took a picture of the motorcycle and recorded the "tag number." (App. 88-89, 91). The tag number came back not "on file." Further investigation established the tag had been inactive for several years and was last used by Eric Jones. (App. 91). Sometime after July 25, 2013, Rhodes developed Collins as a suspect with regard to the identity of the driver on the motorcycle. (App. 95).

On September 10, 2013, while on patrol, Officer Rhodes heard Collins's name on the radio. Other officers were investigating Collins in reference to a vehicle he was attempting to register at the DMV. Rhodes went to the DMV to talk with Collins about his

attempted stop of the motorcycle on July 25, 2013. (App. 66). During his conversation with Collins, Rhodes showed him two photographs he had obtained from Collins's Facebook page. (App. 67). The first photograph depicted a residence with several vehicles parked in the driveway and one in front of the house on the street. The second Facebook photograph showed an orange and black motorcycle parked between a black sedan and a silver Toyota 4-Runner at the same residence. (App. 68-69, 124-125). Officer Rhodes asked Collins if he knew where the house was located or where the motorcycle in the photograph was located. Collins told Rhodes "he didn't know anything about it or where it was located." (App. 78).

At the suppression hearing, Officer Rhodes described the motorcycle in the photograph as having "been stretched out." By that he meant that the rear end had been added onto the motorcycle to make it longer and that normally indicated the motorcycle was not a "conventional motorcycle," but was a "racing type" used in drag racing. (App. 69). Officer Rhodes also noted that the motorcycle had chrome wheels and a chrome swing arm "which was somewhat unique to that motorcycle." (App. 69). Rhodes noted that you "normally" do not see someone driving down the road on such a motorcycle. It was a "customized" motorcycle and not something that could be bought "from the factory." (App. 69-70). When Officer Rhodes saw the photograph of the motorcycle on Collins's Facebook page, he was "100% sure that that was the same motorcycle that had not stopped for [him] on the bypass based on looking at it. It was very distinctive and [he] knew, absolutely no question in [his] mind that was the same motorcycle." (App. 100).

After finishing his conversation with Collins, Officer Rhodes learned through an informant that the house in the Facebook photograph was on Dellmeade Avenue in the City of Charlottesville, about a block away from the Albemarle County line. (App. 70-71). Rhodes went to Dellmeade Avenue and found the house in the photograph. From the roadway, Rhodes could see a motorcycle underneath a cover at 2304 Dellmeade Avenue. The motorcycle was in virtually the same position as the one in the photograph and, just as in the Facebook photograph, was parked next to a silver Toyota 4-Runner. Based on the silhouette and visible chrome sticking out from underneath the cover, the motorcycle "appeared to be the same motorcycle that [Rhodes] had attempted to stop...." (App. 72). Rhodes could tell from the silhouette that the motorcycle was not a conventional motorcycle because it was "much longer" than what a normal motorcycle would look like underneath a cover. (App. 73).

Because of the mobile nature of the motorcycle, Officer Rhodes walked up the driveway about one car length and lifted the cover off of the motorcycle. (App. 74, 90). Rhodes confirmed when he took the cover off, because of its distinctive nature, it was the same motorcycle for which he had been looking. (App. 100). Rhodes first ran the tag number on the motorcycle, which was different than the tag number he had seen on it on July 25, 2013. The new tag number came back to a Kawasaki motorcycle from Waynesboro. Based upon that information, Rhodes acquired the VIN number off the motorcycle.

According to Collins's girlfriend, Kandace Beach, who moved to 2304 Dellmeade Avenue on August 8,

2013, Collins would spend "a couple of nights per week" at the residence and was there the night of September 9-10, 2013. (App. 103-104). The motorcycle in the Facebook picture that had been introduced into evidence had only been parked in the driveway for approximately one week prior to September 10, 2013. (App. 106).

May 7, 2013 Trial

Eric Jones testified that he purchased a motorcycle for $2800 in March, 2013. (App. 139, 144). When he bought the motorcycle, it lacked a title. (App. 140). He initially testified that the motorcycle was stolen, but then clarified that he was never told it was stolen, but he knew as much because there was no title. (Id.). Around the end of April 2013, Jones sold the motorcycle to Collins for $1800. (App. 140-41). When he sold the motorcycle to Collins, Jones told him it lacked a title and "it's possibly stolen." (App. 159). Jones, however, did have a key to the motorcycle. (App. 142). Collins told Jones he was not concerned about the lack of title or that it was stolen because he intended to turn the motorcycle into a racing bike. (App. 142, 146).

Both Officers Matthew McCall and David Rhodes responded to the DMV on September 10, 2013, in order to ask Collins about separate eluding incidents the officers had observed with a motorcycle. (App. 161, 172-73). Other officers had been called to the DMV to speak with Collins regarding his attempt to register an Acura SUV that had been reported stolen, which was later found not to have been stolen. (App. 168-69).

Officer McCall questioned Collins after advising him of his Miranda rights about the motorcycle

involved in an eluding incident that occurred prior to the eluding incident involving Officer Rhodes. (App. 162). Collins responded that he had not owned or driven a motorcycle in months and that it was not him, and also that the last motorcycle he had owned was green. (App. 163-64). The motorcycle in this eluding incident was orange and black with an extended frame. (App. 166). The earlier incident occurred around June 4th, although McCall was not certain of the exact date. (App. 165-66).

Officer Rhodes responded to the DMV to speak with Collins about the eluding incident that occurred on July 25, 2013. (App. 173-74). Through other sources, Rhodes determined that the likely driver of the motorcycle on July 25th was Collins. (App. 175).[1]

While at the DMV, Officer Rhodes looked up Collins's Facebook page and took two pictures with his phone of pictures on Collins's Facebook page. (App. 175). Rhodes recognized the motorcycle in the pictures as the one involved in the eluding incident. (App. 176). When shown the photos, Collins responded that he neither knew anything about it nor where the motorcycle was located. (App. 175-76). Collins added that he had not ridden a motorcycle in a few months. (App. 178). The Facebook page photographs shown to Collins, showed a motorcycle in the driveway of a home and that motorcycle was the one Rhodes had "attempted to stop" on July 25, 2013. (App. 176).

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[1] Officer Rhodes's source turned out to be another officer who knew Jones and had talked to him about the motorcycle. Jones had told the other officer he had sold it to Collins, and that officer related that information to Rhodes. (App. 203).

Later on September 10, 2013, Officer Rhodes continued to investigate the location of the house in the pictures and ultimately came to 2304 Dellmeade Avenue. (App. 178). While still in his police car from the street, Rhodes could see the motorcycle in the driveway, which was covered with a white tarp. (App. 178-79). It was parked in front of a silver SUV at the same angle and in about the same spot as the motorcycle in the Facebook photographs. (App. 179). Officer Rhodes could see that the motorcycle was much longer than an average motorcycle by its silhouette under the cover. (Id.). Officer Rhodes could see the wheels were chrome. (App. 179).

From the sidewalk, Officer Rhodes took a picture of the motorcycle with the cover on it. (App. 179). Officer Rhodes then proceeded to walk up to the motorcycle and remove the cover in order to find a license plate or VIN number. (*Id.*). The license plate on the motorcycle was different than the one Rhodes had seen on the same motorcycle on July 25th and this second tag came back to a different motorcycle located in Waynesboro. (App. 180). The VIN number came back as belonging to a motorcycle stolen in New York. (App. 181). Upon seeing the motorcycle, Officer Rhodes was 100% certain it was the same one that had eluded him on July 25th and the same one in the Facebook photos. (App. 180).

Officer Rhodes came back to the residence on Dellmeade Avenue that same day and knocked on the door. (App. 182). Collins came to the door dressed in a long sleeved shirt and Timberland style boots, "the same exact boots that the rider was wearing...the day [Rhodes] tried to stop the motorcycle." (App. 182). Throughout the conversation, Collins's story changed

several times. First, Collins stated he did not know anything about the motorcycle and then he told Rhodes it was a friend's motorcycle. Eventually, however, Collins stated he had bought the motorcycle from Eric Jones. (App. 183). Collins told Rhodes the last time he moved the motorcycle was about a week earlier. (App. 183). When confronted with information showing the motorcycle had been serviced at Jarman's, Collins admitted to driving it there to get new tires put on it. (App. 183-84). Collins explained the license plate number on the motorcycle by asserting that it had been the plate on another motorcycle he had previously sold. (App. 184).

Collins was then arrested and Rhodes conducted a search incident to arrest. Rhodes uncovered a key in Collins's pants pocket which fit the motorcycle in the driveway. (App. 185).

Kandace Beach testified that she lived at the Dellmeade address from August 8, 2013 through September 10, 2013. (App. 228). The motorcycle had been at the Dellmeade address for about a week prior to September 10, 2013. Beach had lived intermittently at Collins's mother's home on Northfields Circle, and had spent "a good bit of time" at the Northfields Circle home with Collins. Beach testified, however, that she had never seen the motorcycle at the Northfields address. (App. 226, 228).

Collins's mother, Terri Roberts, who lives at the Northfields Circle home, testified that the motorcycle from the Facebook photos was parked in front of her home for more than a month in August. (App. 231-32, 234, 237).

ARGUMENT

I. THE TRIAL COURT DID NOT ERR IN DENYING COLLINS'S MOTION TO SUPPRESS BECAUSE THE OFFICER HAD PROBABLE CAUSE TO CONDUCT THE SEARCH AND THE MOTORCYCLE WAS MOVABLE.

The issue in this case is whether the officer properly conducted the search of the motorcycle in the driveway of Collins's residence. The defendant, as he did at trial, argues that Rhodes did not have probable cause and there were no exigent circumstances justifying Rhodes's walking up the driveway and removing the tarp.

Standard of Review

On appeal, when there is a challenge to a trial court's denial of a motion to suppress, this Court views the evidence "in the light most favorable to the Commonwealth, giving it the benefit of any reasonable inferences." *Glenn v. Commonwealth*, 49 Va. App. 413, 416, 642 S.E.2d 282, 283 (2007) (en banc) (internal quotation marks omitted), aff'd, 275 Va. 123, 654 S.E.2d 910 (2008); see also *Elliott v. Commonwealth*, 61 Va. App. 48, 51, 733 S.E.2d 146, 148 (2012) ("In doing so, we consider facts presented both at the suppression hearing and at trial."). The appellate court gives deference to the factual findings of the trial court but determines de novo whether the facts were properly applied to the law and the evidence was obtained in accordance with constitutional requirements. *See McCain v. Commonwealth*, 261 Va. 483, 490, 545 S.E.2d 541, 545 (2001).

Analysis

Collins, as he did at trial, relies on two recent cases from the United States Supreme Court: *Florida v. Jardines,* 133 S.Ct. 1409 (2013), and *United States v. Jones,* 132 S.Ct. 945 (2012). Jones involved placement by law enforcement officers of a GPS device on the defendant's car. The Court held that such a trespass to property constituted a search. *Id.* at 949. The Court reasoned that the government's physical occupation of private property "for the purpose of obtaining information" constituted a search. *Id.* Importantly, the Court refused to consider the government's alternative argument that the search was reasonable because it had been supported by either reasonable suspicion or probable cause because the government had failed to raise that argument below. *Id.* at 954.

Jardines involved a police officer walking to the front porch of Jardines's home with a narcotics dog. The Court held that this simple approach to the house did not implicate the Fourth Amendment, but that bringing the dog for purposes of obtaining information beyond the threshold constituted a search because even though the officer was implicitly allowed to approach the house as any private citizen would have been able to, his use of the dog exceeded the scope of that implied consent. 133 S.Ct. at 1415-16.

Collins's reliance on Jones and Jardines is misplaced, and his assertion that no probable cause existed in this case fails to acknowledge the facts available to Officer Rhodes prior to his walking down the driveway toward the covered motorcycle.

The rule that a search of a home without a warrant is presumptively unreasonable "is subject to certain reasonable exceptions." *Kentucky v. King,* 131 S.Ct. 1849, 1856 (2011). *King* noted that even the threshold of a house could be crossed without a warrant if exigent circumstances existed. *Id.* "'One well-recognized exception applies when "the exigencies of the situation" make the needs of law enforcement so compelling that [a] warrantless search is objectively reasonable under the Fourth Amendment.'" *Id.* (quoting *Mincey v. Arizona,* 437 U.S. 385, 394 (1978), and citing *Payton v. New York,* 445 U.S. 573, 590 (1980) ('[T]he Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant')." Jardines noted the Court had added to the reasonable expectation test established in *Katz v. United States,* 389 U.S. 347 (1967), by announcing a physical intrusion test in *Jones.* 133 S.Ct. at 1417. In sum, neither *Jardines* nor *Jones* limited nor nullified the long standing precedent establishing exceptions to the warrant requirement.

The Virginia Supreme Court has also noted that a search of a dwelling or the curtilage is presumptively unreasonable unless probable cause and exigent circumstances exist.

The "Fourth Amendment protects the curtilage of a house and... the extent of the curtilage is determined by factors that bear upon whether an individual reasonably may expect that the area in question should be treated as the home itself." *United States v. Dunn,* 480 U.S. 294, 300 (1987). When government agents conduct a search or seizure within protected areas of a

dwelling without a warrant such actions are presumptively unreasonable, *Payton v. New York*, 445 U.S. 573, 586-87 (1980), and ***unlawful unless they are supported by both probable cause and exigent circumstances***. *Kirk v. Louisiana*, 536 U.S. 635, 638 (2002).

Robinson v. Commonwealth, 273 Va. 26, 34, 639 S.E.2d 217, 221 (2007) (emphasis added). In analyzing such a situation, this Court noted as follows:

> In each such case, the court must determine "whether the law enforcement officers had probable cause at the time of their warrantless entry to believe that cognizable exigent circumstances were present." *Keeter v. Commonwealth*, 222 Va. 134, 141, 278 S.E. 2d 841, 846 (1981) (entry to prevent destruction of evidence). We evaluate the existence of probable cause under a standard of objective reasonableness. *See, e. g., Whren v. United States*, 517 U.S. 806, 813 (1996). "The officers are not required to possess either the gift of prophecy or the infallible wisdom that comes only with hindsight. They must be judged by their reaction to circumstances as they reasonably appeared to trained law enforcement officers to exist when the decision to enter was made." *Keeter*, 222 Va. at 141, 278 S.E. 2d at 846.

Cherry v. Commonwealth, 44 Va. App. 347, 357, 605 S.E.2d 297, 301-02 (2004).

"[P]robable cause exists when 'there is a fair probability that contraband or evidence of a crime will

be found in a particular place.'" *Jones v. Commonwealth*, 277 Va. 171, 178, 670 S.E.2d 727, 731 (2009) (quoting United *States v. Grubbs*, 547 U.S. 90, 95 (2006) (quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983)). Although probable cause is a higher standard than reasonable suspicion, it "'requires only a probability or substantial chance of criminal activity, not an actual showing of such activity.'" *Joyce v. Commonwealth*, 56 Va. App. 646, 659, 696 S.E.2d 237, 243 (2010) (quoting Gates, 462 U.S. at 243 n.13). The evidence in this case establishes probable cause to believe evidence related to the crime Rhodes was investigating would be found by searching the motorcycle and that the motorcycle Rhodes had been trying to locate was under the tarp.

Furthermore, the facts of the present case fall clearly within an established exception, the automobile exception. As the United States Supreme Court has consistently held "[i]f a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment ... permits police to search the vehicle without more.'" *Maryland v. Dyson*, 527 U.S. 465, 467 (2013) (per curiam). *Dyson* made clear that exigent circumstances are presumed when an operational vehicle is involved. Id. at 466-67. When the automobile exception applies, police officers may "conduct a search of the vehicle that is as thorough as a magistrate could authorize in a warrant particularly describing the place to be searched." United *States v. Ross*, 456 U.S. 798, 800 (1982) (internal quotation and citation omitted); *see also Zurcher v. Stanford Daily*, 436 U.S. 547, 555 (1978) ("Search warrants are not directed at persons; they authorize the search of places and the seizure of things, and as a constitutional

matter they need not even name the person from whom the things will be seized.").

Officer Rhodes was investigating a felony speeding to elude case. He had observed a uniquely configured motorcycle pass him at 100 mph when he activated his emergency equipment and pursued it. The motorcycle did not stop and Rhodes discontinued the pursuit because the motorcycle was being driven "too reckless [ly]," at 140 mph (App. 80). Since the rider had a tinted shield, Rhodes was unable to identify him, but Rhodes nevertheless continued to investigate the matter.[2] After the incident, Rhodes developed Collins as a suspect. Having found the motorcycle on Collins's Facebook page, and then having located the address that corresponded with what he had seen on the Facebook page, Rhodes was putting the pieces together.

When he observed the covered motorcycle, which appeared to be the same as the one in the Facebook

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[2] Section 46.2-817 provides, in pertinent part as follows:

> B. Any person who, having received a visible or audible signal from any law-enforcement officer to bring his motor vehicle to a stop, drives such motor vehicle in a willful and wanton disregard of such signal so as to interfere with or endanger the operation of the law-enforcement vehicle or endanger a person is guilty of a Class 6 felony. It shall be an affirmative defense to a charge of a violation of this subsection if the defendant shows he reasonably believed he was being pursued by a person other than a law-enforcement officer.

Given the speeds involved and Rhodes need to break-off his pursuit due to the reckless nature in which the motorcycle was being drive (at 140 mph), the conduct he observed on July 25, 2013 was felonious.

page photograph and the one that had eluded him, Rhodes approached the object to obtain information about its licensure and registration to further his investigation of who had been driving it on July 25, 2013.[3] (App. 97-98, 179). The covered motorcycle was parked at nearly the identical angle and in about the same spot in relation to the silver SUV as in the Facebook photograph. It also had the same chrome wheels and stretched silhouette as the motorcycle for which Rhodes had been searching. Given the particular facts and circumstances of this case, Rhodes had probable cause to believe that the covered motorcycle in the driveway at 2304 Del Avenue was the same motorcycle. In short, it was evidence connected to a crime and likely to help him identify the rider through information on the motorcycle such as the VIN number. *See Florida v. White,* 526 U.S. 559, 565 (1999) (upholding seizure of a car from a public place where police had probable cause to believe the car was evidence of a crime); *United States v. Nielsen,* 9 F.3d 1487, 1489-90 (10th Cir. 1993) ("Probable cause to search a vehicle is established if, under the totality of the circumstances, there is a fair probability that the car contains contraband or evidence.") *cf. Shaver v. Commonwealth,* 30 Va. App. 789, 793, 797, 520 S.E.2d

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[3] One type of routine stop or seizure occurs on the lesser standard of reasonable suspicion. An officer who develops such reasonable suspicion concerning a person may stop that person "in order to identify him, to question him briefly, or to detain him briefly while attempting to obtain additional information" in order to confirm or dispel his suspicions. *Hayes v. Florida,* 470 U.S. 811, 816 (1985). An officer with probable cause that an item is linked to a crime can search the item to determine ownership and "identify" someone that may be able to further his investigation.

389, 395, 397 (1999) (holding appellant had no expectation of privacy when driveway where stolen goods were located was completely visible from the road).

Further, Collins's assertion that the trial court erred in some fashion by not making an explicit ruling on exigent circumstances ignores the well-founded automobile exception to the warrant requirement, which requires no independent finding of exigent circumstances.[4] *See Dyson,* 527 U.S. at 466-67. As Dyson stated:

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[4] Collins also implies, without any citation to authority, that Rhodes could have stood guard while another officer obtained a search warrant. (Def. Br. at 19). His argument implicitly concedes Rhodes had probable cause and, in any event, is contrary to the law surrounding the automobile exception. "'For constitutional purposes, we see no difference between on the one hand seizing and holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without a warrant. Given probable cause to search, either course is reasonable under the Fourth Amendment.' *Ross,* 456 U.S. at 807 n. 9 (quoting *Chambers v. Maroney,* 399 U.S. 42, 52 (1970)). *See also Commonwealth v. Bakoian,* 588 N.E.2d 667, 672-673 (Mass. 1992) ("In attempting to strike a balance between a defendant's privacy interests and the interests of the police in situations such as this, we have followed the Supreme Court's initiative and granted police 'leeway ... to conduct immediate searches of automobiles in lieu of holding them pending a warrant,' based on the diminished expectation of privacy generally attaching to automobiles. For this reason we hold that the judge erred in concluding that the ability of the police to guard the vehicle while a warrant was sought removed the exigency attending the situation.") (citations omitted). Further, courts have accorded a lesser expectation of privacy in automobiles than in a home or other building. *See Shirley v. Commonwealth,* 218 Va. 49, 55, 235 S.E.2d 432, 435 (1977).

> Under our established precedent, the "automobile exception" has no separate exigency requirement. We made this clear... when we said that in cases where there was probable cause to search a vehicle ***"a search is not unreasonable if based on facts that would justify the issuance of a warrant, even though a warrant has not been actually obtained."***

527 U.S. at 466-67 (emphasis added by *Dyson)* (quoting *Ross,* 456 U.S. at 809); *see also Pennsylvania v. Labron,* 518 U.S. 938, 940 (1996) (an automobile's inherent mobility is "an exigency sufficient to excuse failure to obtain a search warrant once probable cause to conduct the search is clear.").

In sum, the trial judge did not err in denying the motion to suppress because Officer Rhodes had probable cause to believe that he would find evidence related to his investigation and the motorcycles uncontested mobility satisfied the exigency requirement.[5]

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[5] The record established that the motorcycle had been at the Dellmeade address for only one week at the time of the search and that it had been moved at least once during that week to obtain new tires.

II. THE TRIAL COURT DID NOT ERR IN DENYING COLLINS'S MOTION TO STRIKE THE EVIDENCE AND ITS FINDING COLLINS GUILTY WAS NOT PLAINLY WRONG OR WITHOUT EVIDENTIARY SUPPORT.

Standard of Review

On appeal of a challenge to the sufficiency of the evidence, this Court views the record in the light most favorable to the Commonwealth, the prevailing party at trial. *Stevenson v. Commonwealth,* 258 Va. 485, 488, 522 S.E.2d 368, 368 (1999); *Henry v. Commonwealth,* 63 Va. App. 30, 35, 753 S.E.2d 868, 870 (2014). To do so, the Court "'discard[s] all evidence of the accused that conflicts with that of the Commonwealth.'" *Id.* at 37, 753 S.E.2d at 871 (quoting *Holcomb v. Commonwealth,* 58 Va. App. 339, 346, 709 S.E.2d 711, 714 (2011)). The Court also accepts as true all the credible evidence favorable to the prosecution as well as all fair inferences in support of the conviction that may be drawn from the record. *Id.* "When reviewing the sufficiency of the evidence to support a conviction, the Court will affirm the judgment unless the judgment is plainly wrong or without evidence to support it." *Bolden v. Commonwealth,* 275 Va. 144, 148, 654 S.E.2d 584, 586 (2008). Evaluation of witness credibility and "the weight accorded the evidence are matters solely for the fact finder who has the opportunity to see and hear that evidence as it is presented." *Sandoval v. Commonwealth,* 20 Va. App. 133, 138, 455 S.E.2d 730, 732 (1995); see also *Swanson v. Commonwealth,* 8 Va. App. 376, 378-79, 382 S.E.2d 258, 259 (1984) (trial judge is in the best position to weigh any inconsistencies in a witness's testimony).

Discussion

Collins's assignment of error asserts the evidence was insufficient because the Commonwealth failed to prove "he had actual knowledge that the motorcycle was stolen." This assertion lacks merit. Guilty knowledge, like any other element, may be shown by conduct and circumstances. *See Young v. Commonwealth,* 275 Va. 587, 591, 659 S.E.2d 308, 310 (2008); *Reaves v. Commonwealth,* 192 Va. 443, 451, 65 S.E.2d 559, 564 (1951). Such conduct may serve as evidence that the defendant knew the nature and character of the contraband that was in his possession. *Id.*

In Collins's case, the trial judge noted the exceptional number of inconsistencies with the proposition that Collins did not know that the motorcycle was stolen when he purchased it. First, Eric Jones testified that he informed Collins the motorcycle had no title and Jones assumed it had been stolen prior to Collins purchasing it from him. Next, both Officers Rhodes and McCall testified that when Collins was confronted about the motorcycle at the DMV on September 10, 2013, Collins stated he had not owned a motorcycle for several months, nor had he driven a motorcycle in the last several months, and the last motorcycle he had owned was green. (App. 262). The trial judge noted that if he had bought the motorcycle from Jones as he subsequently admitted, why did he lie about it. *See Covil v. Commonwealth,* 268 Va. 692, 696, 604 S.E.2d 79, 82 (2004) ("false or evasive account is a circumstance ... that a fact-finder may properly consider as evidence of guilty knowledge.").

The court then noted that Collins's mother had testified that the orange and black motorcycle had been parked at the end of her driveway in the month of August, but the defendant's other witness, Kandace Beach, testified that she was with the defendant at his mother's and had never seen the motorcycle until a week prior to September 10, 2013. (App. 263-64). *Id.* The court clearly concluded that the facts and circumstances, including the accounts of the defendant's witnesses and his own varying explanations, supported an inference that he in fact did know the motorcycle was stolen property when he purchased it.

In addition to the specific points noted by the court in finding Collins guilty, the Commonwealth's evidence established that there was one license tag on the vehicle on July 25, 2013, and it had been changed to a different license plate when it was discovered on September 10, 2013, the inference being, that the rider attempted to disguise and distinguish the vehicle from the one being sought for the eluding offense. There was also no explanation as to why the motorcycle, which based upon Collins's Facebook page and Beach's testimony, had been sitting uncovered prior to Officers Rhodes and McCall meeting with Collins at the DMV on September 10, 2013 was suddenly partially covered by a tarp later that same day when Rhodes tracked down the address of the house on Collins's Facebook page. Finally, Collins flight from Rhodes on July 25, 2013 and McCall on June 4, 2013, give rise to a conclusion that he feared the nature of the motorcycle (stolen) would come to light.

CONCLUSION

For these reasons, the judgment of the Chesapeake Circuit Court should be affirmed.

2016 WL 9024641 (Va.)

SUPREME COURT OF VIRGINIA

No. 151277

[Filed January 26, 2016]

RYAN AUSTIN COLLINS,	)
	)
Appellant,	)
	)
v.	)
	)
COMMONWEALTH OF VIRGINIA,	)
	)
Appellee.	)
	)

OPENING BRIEF OF APPELLANT

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[*Tables Omitted in the Printing of this Appendix*]

STATEMENT OF FACTS

On September 10, 2013, Collins was temporarily detained at the Department of Motor Vehicles (DMV) in Albemarle County for attempting to register a motor vehicle (automobile) which had been reported stolen (J.A. 172-172, 188). It was later discovered that the vehicle had not, in fact, been stolen and this matter is unrelated to the present charge (J.A. 188).

However, during his detention at DMV, Officers Rhodes and McCall of the Albemarle County Police Department, having heard Collins name mentioned on the police radio, proceeded to DMV for the purpose of questioning him about two suspected, but unrelated, instances of eluding while operating a motorcycle (J.A. 162, 173-175). The dates of these incidents were June 4, 2013 involving Officer McCall and July 25, 2013 involving Officer Rhodes respectively (J.A. 85-86, 165-166, 189-190).

During the July eluding incident, Officer Rhodes had recorded the licence plate number on the eluding motorcycle (J.A. 174). DMV records indicated that the license plate was inactive (J.A. 174). Officer Rhodes then checked a local police database (known as PISTOL) and the license plate had been associated with an earlier incident involving Eric Jones (J.A. 174).

At the pre-trial hearing, Officer Rhodes testified that he had spoken to Jones several times but he could not recall the dates (J.A. 93). He stated that spoke to Jones after July 25, 2013 (the date of the eluding incident) and both before and after September 10, 2013 (the date of Collins' arrest) (J.A. 93). Jones told Officer Rhodes that he had sold the motorcycle; however,

Officer Rhodes stated Jones had been difficult to contact and that he had received information linking Collins to the motorcycle from a source other than Jones (J.A. 93-94).

Officer Rhodes had recorded the eluding incident on a video device installed in his police vehicle and subsequently took a still shot of one frame of the video (J.A.190, 129).

While still at DMV, Collins was shown the aforementioned still shot which was a photograph of a person on a motorcycle allegedly speeding away from a police vehicle (J.A.190, 129). Collins denied all knowledge of this or any other eluding incident (J.A. 190-192).

While Officer McCall spoke to Collins, Officer Rhodes went to a police vehicle and took some photographs of Collins Facebook page with his phone (J.A. 175). Another unidentified police officer had access to his Facebook page and permitted Officer Rhodes to photograph it (J.A. 88). One photograph showed a motorcycle, similar to the one Officer Rhodes had encountered, parked at residence in the City of Charlottesville (J.A. 125). A second photograph showed that same residence with a picture of a silver Accura similar to the one Collins was attempting to register at DMV (J.A. 124). Officer Rhodes then showed the photographs of the Facebook page to Collins who, according to Officer Rhodes, denied all knowledge of the motorcycle (J.A. 175).

Officer Rhodes, through other sources, had developed information that a motorcycle similar to the one used to elude the police might be located at an

address on Dellmead Lane in the City of Charlottesville (J.A. 178). Upon arrival at that address, Officer Rhodes saw a motorcycle parked in a private driveway and covered with a tarp (J.A. 178-179). The outline of the motorcycle was similar to the one he had seen on July 25, 2013 and he suspected that it might be the same one (J.A. 179).

Without the consent of anyone residing at the property, Officer Rhodes proceeded onto private property, removed the tarp, examined the motorcycle and recorded both the license plate number and the Vehicle Identification Number (VIN) (J.A. 90-91, 101, 179). The licence plate was not the same one that was on the motorcycle during the eluding incident (J.A. 180). However, DMV records revealed that the licence plate was associated with the different motorcycle and that the VIN was associated with a motorcycle that had been reported stolen out of New York several years prior to this date (J.A. 180-181, 186).

Officer Rhodes set up surveillance of the residence while he developed further evidence (J.A. 182). Later he proceeded to the front door to talk to the resident(s) (J.A. 182). Collins answered the door (J.A. 214).

Collins initially denied knowledge of the motorcycle but later admitted that he had purchased the motorcycle from Eric Jones and that he had recently driven it from his mother's house to Jarman's Sportscycles to get new tires and then to Dellmead Lane (J.A. 183-184). Officer Rhodes then placed Collins under arrest for receiving stolen property (J.A. 185, 197). Officer Rhodes stated that he did not inform Collins that the motorcycle was reported stolen until after he placed him under arrest (J.A. 197).

At a pre-trial hearing, Officer Rhodes justified his trespass onto private property by saying that (a) he needed to verify that this motorcycle was in fact the same one he had encountered during the eluding incident of July 25, 2013; (b) a motorcycle is movable; (c) he needed to verify the owner of the vehicle and whether the owner lived at that address; (d) he needed to verify whether the motorcycle was properly registered; (e) he needed to verify whether the motorcycle was properly insured; (f) he needed to verify whether the operator of the motorcycle was properly licensed to do so (J.A. 97-98). He admitted, however, that the motorcycle itself is not contraband (J.A. 98).

He also admitted that, even after examining the motorcycle and determining all of the foregoing facts related to the motorcycle, he still had no probable cause to charge Collins with eluding (J.A. 98).

SUMMARY OF ARGUMENT

Officer Rhodes of the Albemarle County Police Department entered onto private property without a warrant to search for a motorcycle which he suspected as having been involved in a previous incident of eluding. Once established in the curtilage of the home, he physically removed a tarp which covered the motorcycle and recorded the tag and vehicle identification numbers. After determining that the motorcycle had been reported stolen, he arrested Collins for receiving stolen property.

The Commonwealth does not dispute that Rhodes' actions constituted a warrantless search within the meaning of the Fourth Amendment. Moreover, both the trial court and the Court of Appeals rejected the

Commonwealth's argument that the search was justified by the automobile exception to the warrant requirement.

The trial court held that the search was reasonable because the officer had probable cause to conduct the search. The Commonwealth made no argument for and the trial court made no findings of exigent circumstances. The trial court erred because, assuming without conceding that probable cause existed, exigent circumstances were required to conduct the search without a warrant.

The Court of Appeals correctly held that both probable cause and exigent circumstances were required to justify the trespass and the search. However, the Court of Appeals erred in finding that the officer had probable cause to conduct the search because the motorcycle was not evidence of a crime and was irrelevant to the issue of establishing the identity of the driver in the eluding incident under investigation.

More importantly, the Court of Appeals erred in holding that exigent circumstances existed to justify the warrantless search because (a) the motorcycle was not contraband that could be destroyed, moved or hidden without the knowledge of the police, and (b) Officer Rhodes had both the resources and the time secure a warrant prior to his illegal trespass onto private property.

The Court of Appeals erred in holding that exigent circumstances existed to justify Officer Rhodes warrantless trespass onto private property in order to conduct a search for evidence.

ASSIGNMENTS OF ERROR

1. The trial court erred in denying Collins' motion to suppress the evidence related to the motorcycle because the officer illegally trespassed onto private property for purpose of conducting a search in violation of his Fourth Amendment right to be free of unreasonable searches and seizures. (J.A. 118-121) The Court of Appeals of Virginia erred in upholding the judgment of the trial court and finding that the officer acted lawfully under the Fourth Amendment in entering the property and searching the motorcycle. (J.A. 282)

NATURE OF THE CASE AND MATERIAL PROCEEDINGS IN THE TRIAL COURT

On September 10, 2014, the defendant-appellant, Ryan Austin Collins, was arrested and charged on a warrant with receiving stolen goods having a value of $200.00 or more in violation of Virginia Code § 18.2-108.

On October 17, 2013, the General District Court for Albemarle County found probable cause that Collins had committed the offense and certified the matter to the grand jury.

On December 2, 2013, the grand jury for Albemarle County returned an indictment for the felony offense of receiving stolen goods as charged on the warrant.

On December 18, 2013, Collins filed a motion to suppress all evidence in the case on the grounds that the search and seizure of the evidence was in violation of his Fourth Amendment rights to be free of unreasonable searches and seizures.

On April 30, 2014, the Circuit Court of Albemarle County, upon evidence and argument of counsel, denied his motion to suppress.

On May 7, 2014, Collins was tried by a judge sitting without a jury and was found guilty as charged in the indictment. Final judgment was entered on May 20, 2014.

Mr. Collins filed a timely notice of appeal.

On December 19, 2014, the Court of Appeals granted his appeal. On July 21, 2015, the Court of Appeals of Virginia affirmed the judgment of the trial court.

Mr. Collins noted a timely appeal. On December 16, 2015, the Supreme Court of Virginia awarded him this appeal.

ARGUMENT

I THE TRIAL COURT ERRED IN DENYING COLLINS' MOTION TO SUPPRESS THE EVIDENCE RELATED TO THE MOTORCYCLE BECAUSE THE OFFICER ILLEGALLY TRESPASSED ONTO PRIVATE PROPERTY FOR PURPOSE OF CONDUCTING A SEARCH IN VIOLATION OF HIS FOURTH AMENDMENT RIGHT TO BE FREE OF UNREASONABLE SEARCHES AND SEIZURES

a. *Standard of review*

On appeal, the circuit court's factual findings in denying a motion to suppress are reviewed for clear error, but the circuit court's application of the law is

subject to *de novo* review. *Commonwealth v. Quarles*, 283 Va. 214, 720 S.E.2d 84 (2012).

b. *Officer Rhodes illegally trespassed onto private property for the purpose of conducting a search for evidence*

The government's physical intrusion onto an effect for the purpose of obtaining information constitutes a search within the meaning of the Fourth Amendment. *United States v. Jones*, 565 U.S. 101259 (2012). Fourth Amendment jurisprudence applies not only to a reasonable expectation of privacy but also to common law trespass. Id. A police officer may not enter the curtilage of a home simply to conduct a search without a warrant. *Florida v. Jardines*, 569 U.S. 11564 (2013).

In *Jones*, the U. S. Supreme Court held that the Government's attachment of a GPS device to a vehicle and the use of that device to monitor the vehicle's movements constituted a search under the Fourth Amendment and upheld the suppression of all evidence obtained by the warrantless use of a GPS device. *Jones* at Slip. Op. 1, 12. In that case, the vehicle was parked at the defendant's residence at the time the device was attached. Id. The motor vehicle is an effect protected by the Fourth Amendment. Id.

In *Jardines*, the U. S. Supreme Court held that when the government obtains information by physically intruding on the curtilage of a house, a search within the meaning of the Fourth Amendment has undoubtedly occurred. *Jardines* at Slip. Op. 1. In that case, the police had received an unverified tip that marijuana was being grown at Jardines' home. Id. After a brief period of surveillance, the police entered

the curtilage of the home with a drug detecting dog which gave a positive alert for narcotics at the base of the front door. Id. At Slip. Op. 2. The Court upheld the suppression of all evidence holding that the officers had engaged in a Fourth Amendment search unsupported by probable cause. Id. at Slip. Op. 1, 10.

In this case, several facts are uncontested; namely, (1) Officer Rhodes entered into the curtilage of a home without a warrant and without permission of the residents; (2) he did so for the purpose of conducting a search for a particular motorcycle which was parked in the driveway at the residence; (3) he was investigating the crime of eluding; (4) he had received a tip, the source of which was not disclosed, that Collins may have been the driver that had eluded him on July 25, 2013; (5) he physically removed a tarp which was covering the motorcycle noting its appearance and recording the licence tag number and the Vehicle Identification Number; (6) even after verifying that Collins owned the motorcycle, Officer Rhodes had, and still has, no probable cause to arrest him for the crime of eluding; (7) Collins was an invited overnight guest at the residence and had standing to contest the Fourth Amendment violation.

The trial court opined that *Jardines* was not applicable because it could be distinguished on the facts; specifically, that *Jardines* involved the use a drug detecting dog (J.A. 118-121). The principal issue before the court in *Jardines* was whether the use of a drug detection dog by the police constituted a "search" within the meaning of the Fourth Amendment. *Jardines* at Slip. Op. 1. Yet in this case neither the Commonwealth nor the trial court disputed that Officer

Rhodes had conducted a search. Thus, the trial court relied upon a "distinction" without a difference.

As the U. S. Supreme Court said:

> "...when it comes to the Fourth Amendment, the home is first among equals. At the Amendment's "very core" stands "the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." Silverman v. United States, 365 U.S. 505, 511 (1961). This right would be of little practical value if the State's agents could stand in a home's porch or side garden and trawl for evidence with impunity ... A license may be implied from the habits of the country," notwithstanding the "strict rule of the English common law as to entry upon a close." *McKee v. Gratz*, 260 U.S. 127, 136 (1922) (Holmes, J.). We have accordingly recognized that "the knocker on the front door is treated as an invitation or license to attempt an entry, justifying ingress to the home by solicitors, hawkers and peddlers of all kinds." *Breard v. Alexandria*, 341 U.S. 622, 626 (1951). This implicit license typically permits the visitor to approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave. Complying with the terms of that traditional invitation does not require fine-grained legal knowledge; it is generally managed without incident by the Nation's Girl Scouts and trick-or-treaters. Thus, a police officer not armed with a warrant may approach

> a home and knock, precisely because that is "no more than any private citizen might do."

Jardines, 569 U.S. at Slip. Op. 4, 6.

As in *Jardines*, the police in this case trespassed onto private property for the purpose of conducting a search. This act violated the Fourth Amendment.

As the U. S. Supreme Court has said,

> "One virtue of the Fourth Amendment's property-rights baseline is that it keeps easy cases easy. That the officers learned what they learned only by physically intruding on Jardines' property to gather evidence is enough to establish that a search occurred."

Jardines, 569 U.S. at Slip. Op. 9.

By this standard, this case is easy. Officer Rhodes trespassed onto private property to search for evidence of a crime. Thus Officer Rhodes violated the Fourth Amendment when, without a warrant, he entered onto the curtilage of Collins' home for the purpose of conducting a search for a motorcycle, physically removed the tarp from the motorcycle and conducted a search of the motorcycle. Thus the trial court erred in concluding that the holding in and the logic of *Jardines* were not applicable to this case.

c. *The emergency exception to the warrant requirement does not apply*

Warrantless entry and search of a home or its curtilage require not only probable cause but also exigent circumstances. See, *Warden v. Hayden*, 387 U.S. 294 (1962) (hot pursuit of a suspect armed felon);

Minnesota v. Olsen, 495 U.S. 91 (1990) (imminent risk of destruction of evidence, escape of the suspect, or danger to police or others); *Brigham City v. Stuart*, 547 U.S. 398 (2006) (police reasonably believe an occupant is seriously injured or in imminent danger); *Washington v. Commonwealth*, 60 Va. App. 427, 728 S.E.2d 521 (2012) (exigent circumstances, coupled with a showing of probable cause of house having been broken into, justified warrantless entry into home); *Verez v. Commonwealth*, 230 Va. 405, 410, 337 S.E.2d 749, 752-53 (1985) (warrantless entries are presumed to be unreasonable, in Fourth Amendment terms, casting upon the police a heavy burden of proving justification by exigent circumstances).

(i) Probable cause

The trial court initially expressed some concerns about the applicability of *Jones* to the analysis of this case because in *Jones* the government had forfeited certain arguments. (J.A. 113-114). Collins explained why the fact that the government had forfeited certain arguments in *Jones* did not affect the analysis in this case. (J.A. 114-115).[1] In *Jones*, the Supreme Court held

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[1] The Court of Appeals stated that "More egregiously, appellant fails to note that in Jones, the government forfeited the argument that it had probable cause for the search, and thus the search was lawful **under the automobile exception**, because it had failed to raise the argument below. *Collins*, Ct. App. at 5, n.2. Collins could find no reference to the automobile exception in the *Jones* opinion where cited by the Court of Appeals. *Jones* was cited by Collins for the proposition that a trespass on an effect (i.e., an automobile) was a search under the Fourth Amendment independent of the long standing reasonable expectation of privacy standard. At oral argument, Collins specifically argued that *Jones*

that police trespassed on an effect when they attached a GPS unit to a motor vehicle and used the GPS unit to monitor the vehicle's movements. The trespass alone triggered Fourth Amendment protections under the property rights analysis independent of any "reasonable expectation of privacy." Officer Rhodes, in addition to trespassing on private property when he entered the curtilage of the home, also trespassed on an effect when he removed the tarp from the motorcycle for the purpose of searching for evidence. Unlike the government in *Jones*, Collins was not forfeiting his challenge to the probable cause requirement.

Nonetheless, the trial court held that Officer Rhodes' intrusion onto Collins' property was not unreasonable solely because he had probable cause to conduct the search. (J.A. 121). The trial court erred.

Officer Rhodes could see the outline of a motorcycle from the street but was unable to determine from that vantage point if it was the same one involved in the eluding incident. At that time, he had no reason to suspect that the motorcycle was stolen. Moreover, even if it proved to be the same motorcycle he had encountered on July 25, he had no reason to believe that identifying the motorcycle would enable him to identify Collins as the driver on that date.

Only after physically intruding on Collins' property did he learn that the motorcycle may have been the same one involved in an earlier eluding incident. But

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and *Jardines* created recent precedents in Fourth Amendment jurisprudence which require courts to look beyond the reasonable expectation of privacy standard and determine whether a trespass has occurred.

Officer Rhodes knew that the identity of the driver, not the identity of the motorcycle, was the principal object of his investigation. Even after removing the tarp to search for evidence, he still has not learned and could not have learned who was driving the motorcycle at the time. To this day, Officer Rhodes is without probable cause to charge Collins with eluding.

Moreover, only after physically intruding on Collins' property did he learn that the motorcycle had been reported stolen. Prior to his intrusion, Officer Rhodes had no suspicion, much less probable cause, to suspect that it had been stolen.

Thus, the trial court erred in holding that Officer Rhodes had probable cause to trespass onto private property to search for evidence of a crime.

(ii) Exigent circumstances

The Commonwealth argued that a warrant was not required under the automobile exception to the warrant requirement. (J.A. 115-117). Collins argued that the automobile exception did not apply to the facts of this case because the exception was created to authorize the search in a vehicle that had been stopped on a highway where probable cause existed to believe that contraband would be found in the vehicle. In this case, the vehicle was not stopped on a highway and the officer had no probable cause to believe contraband would be found in the vehicle. He was simply searching for a vehicle. Thus, Collins argued that both probable cause and exigent circumstances were required to justify the officer's trespass onto private property for the purpose of conducting the search. (J.A. at 117-118).

The court agreed that the automobile exception did not apply to the facts of this case because of the distinctions cited by Collins. (J.A. at 119). Nonetheless, the court held that the search was not an unreasonable government intrusion because Officer Rhodes had probable cause to conduct the search. (J.A. at 119-121). The court, however, did not find or even address requirement for or the existence of exigent circumstances. (J.A. 119-121).

In this case, no exigent circumstances existed. None were articulated by Officer Rhodes, none were argued by the Commonwealth and none were cited by the court.

This was not a "hot pursuit" situation because Officer Rhodes was investigating a crime of eluding which had occurred nearly two months prior to the date of his warrantless trespass. There was no risk that evidence would be destroyed because the motorcycle was in plain view and Officer Rhodes had already set up surveillance of the residence to prevent anyone from removing the motorcycle without his knowledge. Nothing about the case or in the testimony suggested that there might be any danger to the police or to others.

Officer Rhodes could easily have complied with the law by knocking on the front door for the purpose of talking to and seeking consent from the residents. Instead of complying with the traditional invitation to "knock and talk," Officer Rhodes trespassed onto the property and removed the tarp which covered the motorcycle. This act exceeded the licence generally accepted for entry onto private property.

Alternatively, he could have sent Officer McCall to the magistrate for a search warrant based on a showing of probable cause to an independent judicial officer. He had already sent Officer McCall on another fact-finding errand to Jarman's Sportcycles. Thus, Officer McCall was not a critical component of the surveillance operation.

Even if some semblance of probable cause existed, there were no exigent circumstances to justify the trespass onto the curtilage of Collins' home. Officer Rhodes' warrantless trespass onto private property to search for evidence without probable cause and exigent circumstances was *per se* unreasonable and a violation of Collins' rights under the Fourth Amendment of the Constitution of the United States.

Thus, the trial court erred in holding that the warrantless intrusion onto private property was reasonable.

d. *Conclusion*

For the foregoing reasons, this court should find that the trial court erred in denying Collins' motion to suppress evidence related to the motorcycle, reverse his conviction and remand the matter back to the circuit court for further proceedings.

II THE COURT OF APPEALS OF VIRGINIA ERRED IN UPHOLDING THE JUDGMENT OF THE TRIAL COURT AND FINDING THAT THE OFFICER ACTED LAWFULLY UNDER THE FOURTH AMENDMENT IN ENTERING THE PROPERTY AND SEARCHING THE MOTORCYCLE.

a. *The Court of Appeals erred in finding that the officer had probable cause to search for the motorcycle on private property.*

Probable cause exists when the facts and circumstances within the officer's knowledge alone are sufficient to warrant a person of reasonable caution to believe that an offense has been or is being committed. *Commonwealth v. Grimstead,* 12 Va. App. 1066, 1069, 407 S.E.2d 47 (1991). However, suspicion, or even strong reason to suspect is not an adequate substitute for probable cause to justify the entry and search. Id.

The Court of Appeals held that Officer Rhodes "unquestionably had probable cause to believe that the motorcycle was the one from the eluding incident before entering the property." (J.A. 279). If that is all probable cause requires in this case, then Collins must concede the issue. However, the probable cause standard requires more. "The long-prevailing standard of probable cause protects 'citizens from rash and unreasonable interferences with privacy and from unfounded charges of crime,' while giving 'fair leeway for enforcing the law in the community's protection.'" *Maryland v. Pringle,* 540 U.S. 366, 370 (2003), quoting *Brinegar v. United States,* 338 U.S. 160, 176 (1949).

In this case, the officer was investigating a crime of eluding which had occurred approximately two months prior to the date of this search. At trial, Collins produced evidence that the charges of eluding were completely unfounded because (a) he was in court and otherwise confined to home electronic incarceration on the date of the first alleged incident involving Officer McCall and (b) he did not even own or possess the motorcycle until about two weeks after the date of the second incident involving Officer Rhodes. And as argued, even after conducting his search, the officer still does not have probable cause the charge Collins with eluding.

The Court of Appeals stated that this argument "confuses probable cause needed to arrest and charge an individual with the probable cause required to conduct the search." (J.A. 279, n.3). The two, however, are not completely inseparable because probable cause to search must be supported by facts to show that the search will yield evidence of the crime under investigation. To prove the crime of eluding, the Commonwealth must prove the identity of the driver and the nature of the driving. The make, model or type of the vehicle involved in the offense of eluding is not relevant to proving the elements of the offense.

Merely ascertaining that the motorcycle here as parked on private property was the same one involved in the eluding incident does not advance his investigation. The motorcycle itself was not evidence of a crime. Moreover, Officer Rhodes articulated no facts to support any reasonable belief that the motorcycle itself might be contraband or that it might contain contraband.

In this case, the officer, without a warrant, trespassed on private property to conduct a search. This act alone was an unreasonable intrusion on Collins' privacy interests and his property rights. Moreover, the crime under investigation was then and remains completely unfounded.

Thus, considering the broad purpose of the probable cause standard, the Court of Appeals erred in holding that the officer had probable cause to enter the property to conduct the search.

b. The Court of Appeals erred in holding that exigent circumstances justified the officer's warrantless entry onto the property and the search of the motorcycle.

The Court of Appeals concluded that the following circumstances created an exigency that justified a warrantless intrusion on the private property to conduct a search: (a) "Officer Rhodes had a reasonable belief that the motorcycle could be removed or destroyed, as a motorcycle is readily movable;" (b) "the motorcycle had successfully eluded the police on two previous occasions and could potentially have done so again;" (c) "appellant had already denied owning or knowing anything about the motorcycle or the residence in the picture;" (d) appellant was aware that law enforcement was investigating incidents involving the motorcycle and ... that he might have an interest in concealing or destroying evidence;" (d) the officer "saw that someone had placed a tarp over the motorcycle, indicating a possible attempt to conceal it." (J.A. 281).

Even conceding those facts, the Court of Appeals erred in concluding that they created an emergency compelling the officer to act immediately.

(i) The automobile exception

When a motor vehicle is lawfully stopped on a highway, the police may search the vehicle without a warrant if they have probable cause to believe there is contraband or other evidence of criminal activity in the vehicle. *Carroll v. United States*, 267 U.S. 132 (1925); *Maryland v. Dyson*, 527 U.S. 465 (1999). This exception may also apply to vehicles which are capable of being used on a highway but are found stationary in a place not regularly used for residential purposes. *California v. Carney*, 471 U.S. 386 (1985).

The logic of the foregoing automobile exception is premised on the assumption that citizens have considerably less expectation of privacy in their automobiles than in their homes because motor vehicles travel on the open road. Officer Rhodes claimed authority for the warrantless search on the grounds that the motorcycle was mobile. But unlike the trailer in *Carney*, the motorcycle in this case was clearly parked at a private residence

The Court of Appeals noted that "United States Supreme Court has suggested that a search of a vehicle on private property required more than mere mobility, as is generally sufficient under the automobile exception." (J.A. 282, n.4). Moreover, *Carroll* and its progeny were decided before *Jones* and *Jardines* both of which add a property rights analysis to the established "reasonable expectation of privacy" analysis

which had heretofore dominated the Court's Fourth Amendment jurisprudence.

Thus, the Court of Appeals correctly did not rely on the automobile exception to justify the warrantless search in this case.

(ii) Exigent circumstances

The U. S. Supreme Court has held that law enforcement officers may make a warrantless entry onto private property to fight a fire and investigate its cause, *Michigan v. Tyler*, 436 U.S. 499, 509 (1978), to prevent the **imminent destruction** of evidence, *Ker v. California*, 374 U.S. 23, 40 (1963) (plurality opinion) (**emphasis added**), or to engage in "'hot pursuit'" of a fleeing suspect, *United States v. Santana*, 427 U.S. 38, 42, 43 (1976). *Brigham City v. Stuart,* 547 U.S. 398, 403 (2006). Warrants are generally required unless 'the exigencies of the situation' make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment. Id., *quoting Mincey v. Arizona*, 437 U.S. 385, 393-394 (1978).

An exigent circumstance exists to justify a warrantless search where a law enforcement officer has probable cause to believe that it is necessary to prevent destruction of evidence. *Evans v. Commonwealth*, 290 Va. 277, 287, 776 S.E.2d 760 (2015). The proper inquiry focuses on what an objective officer could reasonably believe. Id. If the defendant himself has the power to destroy the evidence, the courts assume that he is likely to avail himself of the opportunity. Id.

In *Evans*, law enforcement officers detected the odor of marijuana emanating from the window of an

apartment and knocked on the door to investigate. 290 Va. at 280-281. After being rebuffed several times by the defendant's mother, the police entered the apartment without a warrant and found contraband. Id. The Supreme Court of Virginia held that the warrantless entry was justified to thwart the objectively reasonable possibility that evidence would be destroyed, discarded, or hidden if they did not take immediate action. Id. at 291.

The opinion in *Evans* drew a strong dissent which noted that probable cause requires facts creating more than a bare suspicion that an exigency existed and concluded that the officers' subjective belief that the occupants would imminently destroy evidence is not supported by the record. Id. at 300-302.

In this case, the facts cited by the Court of Appeals may, at best, give rise to a generalized belief that Collins might attempt to move or further conceal the motorcycle. Thus, without citing *Evans* specifically, the Court of Appeals applied similar logic; namely, that exigent circumstances existed to justify a warrantless search because Collins knew the police were searching for the motorcycle in connection to a crime for which he was the suspect and because he had the motive to conceal it.

However, unlike illegal drugs, the motorcycle was in no imminent danger of being destroyed. Officer Rhodes had set up a surveillance of the residence with the motorcycle in plain view and had already dispatched Officer McCall to collect additional evidence. Had Collins emerged from the residence, removed the tarp and attempted to drive the motorcycle away, Officer Rhodes would have had clear evidence linking Collins

to the motorcycle and could have immediately approached him to further investigate the suspected incident of eluding. Had Collins refused to talk and attempted to drive away, Rhodes could have noted the tag number and developed probable cause to stop him based on a faulty registration. Had Collins attempted to elude the stop, Officer Rhodes would have probable cause to arrest him on a new charge of eluding. None of these possibilities compelled Officer Rhodes to trespass on private property to identify the motorcycle. Thus, even assuming the validity of Rhodes' subjective belief in Collins' motives, Collins did not have the power to destroy, move or hide the motorcycle without Rhodes' knowledge.

However, in finding exigent circumstances, the Court of Appeals relied almost exclusively on *Thims v. Commonwealth*, 218 Va. 85, 235 S.E.2d 443 (1977). This case can easily be distinguished on the facts. In *Thims*, the police officer seized a motor vehicle and during an inventory search found contraband which was introduced into evidence at trial. In that case, the police had probable cause to believe that the vehicle had been purchased by the defendant with a forged check and thus was itself evidence of a crime. The police also had probable cause to believe that contraband from a recent burglary would be found in the trunk of the vehicle. The officer articulated facts about why he thought exigent circumstances existed (possible movement of the vehicle and/or destruction of the contraband in the trunk) and why he did not have time to seek a warrant (fast-paced investigation of a recent crime). The Supreme Court of Virginia found that the seizure of the automobile and the subsequent

search of the trunk were lawful under the exigent circumstances exception to the warrant requirement.

In this case, no reasonable law enforcement officer could claim that, under these facts, the motorcycle was in imminent danger of being destroyed. Indeed, Officer Rhodes made no such claim and the Commonwealth made no such argument either at in the trial court or on appeal.

In conclusion, the Court of Appeals erred because the facts do not objectively support the conclusion that sufficient exigencies existed to justify a warrantless intrusion onto private property.

(iii) Time for a warrant

To determine whether a law enforcement officer faced an emergency that justified acting without a warrant, courts must look to the totality of circumstances. *Missouri v. McNeely,* 569 U.S. _____ 111425 (2013), citing *Brigham City v. Stuart*, 547 U.S. 398 (2006). The exigent circumstances exception to the warrant requirement applies when there is a compelling need to prevent the imminent destruction of important evidence, and there is no time to obtain a warrant. *Missouri v. McNeely,* 569 U.S. _____ 111425 (2013) (Chief Justice Roberts concurring).

In *McNeely,* a law enforcement officer arrested a suspect for driving under the influence of alcohol. After the suspect declined to take a breath test, he was taken to a nearby hospital for blood testing. The Court found that the metabolization of alcohol in the bloodstream and the ensuing loss of evidence are among the factors that must be considered in deciding whether a warrant is required. Id. Nonetheless the Court held that the

natural dissipation of alcohol in the bloodstream does not constitute an exigency in every case sufficient to justify conducting a blood test without a warrant. Id.

The concurring opinion by Chief Justice Roberts certainly indicates that whether sufficient time exists to get a warrant is one additional factor in determining whether the exigencies permit warrantless searches.

He stated, "(t)he natural dissipation of alcohol in the bloodstream constitutes not only the imminent but ongoing destruction of critical evidence. That would qualify as an exigent circumstance, except that there may be time to secure a warrant before blood can be drawn. If there is, an officer must seek a warrant. If an officer could reasonably conclude that there is not, the exigent circumstances exception applies by its terms, and the blood may be drawn without a warrant." *Missouri v. McNeely,* 569 U.S. _____ 111425 (2013).

The government bears the burden of showing that a warrant could not have been secured in time. See, *United States v. Davis*, 313 F.3d 1300 (11th Cir. 2002).

In this case, even if the Court were to conclude that the motorcycle was in imminent danger of destruction, the Court must further assess whether the officer had sufficient time to secure a warrant. The answer is self-evident from the facts. Officer Rhodes, like the law enforcement officer in *McNeely*, never testified or claimed that he did not have time to get a warrant, only that he thought he had the authority to search without one. The Commonwealth never argued that the officer did not have time to get a warrant.

And the facts suggest ample time. Officer Rhodes had set up surveillance of the residence and had

already dispatched Officer McCall on another fact-finding mission. Not only could Officer Rhodes have dispatched Officer McCall to the more urgent requirement of securing a search warrant but in today's age with access to cell phones, text messaging, mobile e-mail and two-way radio communications, Officer Rhodes could have initiated the process on his own without abandoning his surveillance position. He not only failed to do so but failed to show why he could not have done so. In short, the Commonwealth has failed to meet this burden of proof.

Moreover, the requirement to prove a time element further demonstrates the inapplicability of *Thims* which was decided before the age of cell phones, text messaging and mobile email integrated with two way radio communications. Such technological advances in the ability of officers on the street to secure timely warrants must be considered in determining whether sufficient exigent circumstances exist to justify a warrantless search.

In conclusion, the Court of Appeals erred because the facts support the conclusion that Officer Rhodes had ample time and the means to secure a warrant without requiring a warrantless trespass onto private property for the purpose of conducting a search.

(iv) Awareness of police presence

Exigent circumstances will not normally exist where the suspects are unaware of the police surveillance or presence. See *United States v. Santa*, 236 F.3d 662 (11th Cir. 2000); *United States v. Davis*, 1270 F. Supp. 2d 1234 (M.D. Fla. 2001); *United States v. Hernandez*, 214 F. Supp. 2d 1344 (S.D. Fla. 2002).

An exigent circumstance exists to justify a warrantless search where a law enforcement officer has probable cause to believe that it is necessary to prevent destruction of evidence. *Evans v. Commonwealth*, 290 Va. 277, 287, 776 S.E.2d 760 (2015). The proper inquiry focuses on what an objective officer could reasonably believe. Id.

In this case, no evidence was introduced to support a finding that Collins was aware of the presence or surveillance law enforcement officers. Nonetheless, the Court of Appeals noted several factors from which Officer Rhodes could have reasoned that Collins knew of the eluding investigation and thus might attempt to move or conceal the motorcycle.

However, Officer Rhodes had already taken the step to secure the premises visually by setting up surveillance of both the motorcycle and the front entry/exit from the premises. Even if Collins had become aware of their presence and attempted to exit from the rear, the motorcycle would have remained in place until such time as a warrant had been authorized. For this additional reason, the Court of Appeals erred to holding that sufficient exigencies existed for officer Rhodes to enter the property and examine the motorcycle.

CONCLUSION

The Appellant, Ryan Austin Collins, respectfully prays that this Honorable Court find that the Court of Appeals erred in upholding the rulings of the trial court, reverse the judgment of the trial court and remand the matter back to the Court of Appeals for further proceedings consistent with this ruling.

2016 WL 9024640 (Va.)

SUPREME COURT OF VIRGINIA

No. 151277

[Filed February 17, 2016]

RYAN AUSTIN COLLINS,	)
	)
Appellant,	)
	)
v.	)
	)
COMMONWEALTH OF VIRGINIA,	)
	)
Appellee.	)

BRIEF FOR THE COMMONWEALTH

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[*Tables Omitted in the Printing of this Appendix*]

STATEMENT OF THE CASE

Ryan Austin Collins was indicted for possession of stolen property by an Albemarle County grand jury on December 2, 2013. (App. 50). On April 30, 2014, the Albemarle County Circuit Court denied Collins's motion to suppress evidence, which challenged a warrantless search of a partially covered motorcycle in his girlfriend's driveway. (App. 118-21, 268). The following week, the trial court, sitting without a jury, convicted Collins of receiving stolen property and sentenced him to three years in prison, with all but two months suspended. The final judgment order was entered on May 20, 2014. (App. 271).

The Court of Appeals of Virginia granted Collins's petition for appeal and then affirmed the ruling of the trial court on July 21, 2015. (App. 274-86). *Collins v. Commonwealth*, 65 Va. App. 37, 773 S.E.2d 618 (2015).[1]

ASSIGNMENT OF ERROR

The trial court erred in denying Collins' motion to suppress the evidence related to the motorcycle because the officer illegally trespassed onto private property for the purpose of conducting a search in violation of his Fourth Amendment right to be free from unreasonable searches and seizures. The Court of Appeals erred in upholding the judgment of the trial court and finding that the officer acted lawfully under the Fourth Amendment in entering the

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[1] The Court of Appeals rejected Collins challenge to the sufficiency of the evidence. Collins did not include that issue in his petition for appeal to this Court.

property and searching the motorcycle. *Collins v. Commonwealth*, 65 Va. App. 37, 46, 773 S.E.2d 618 (2015).

STATEMENT OF FACTS

On July 25, 2013, Officer David Rhodes of the Albemarle County Police Department was on patrol and noticed a motorcycle coming from behind him at a high rate of speed. (App. 65-66, 79). Rhodes activated his radar, which indicated the motorcycle was traveling at 100 mph in a posted 55 mph zone. (App. 79). The motorcycle passed him on his left. Rhodes made eye-contact with the driver, but could not identify him because the driver wore a helmet with a tinted shield. Rhodes activated his emergency equipment and attempted to stop the motorcycle, which he noted was an orange and black Suzuki. (App. 84). The motorcycle "took off at a very high rate of speed [exceeding] 140 mph." (App. 80). Rhodes pursued the motorcycle until it drove onto the interstate. Rhodes then stopped the pursuit because the driver "was driving too reckless." (App. 80).

During the incident, Rhodes's dash camera made a video recording of the incident and he took a screen shot of the motorcycle from that video. He also recorded the "tag number" on his hand during the pursuit. (App. 88-89, 91). Rhodes checked the tag number and it came back not "on file." Further investigation established the tag had been inactive for several years and was last used by an "Eric Jones." (App. 91). Sometime after July 25, 2013, Rhodes's investigation developed Collins as

the likely driver of the motorcycle. (App. 95).[2] Rhodes drove by Collins's residence on Northfields Circle several times after July 25, 2013, but never saw the "orange and black motorcycle" at that residence. (App. 96-97).

On September 10, 2013, while on patrol, Officer Rhodes heard Collins's name on the radio. Other officers were investigating Collins in reference to a vehicle (a silver Acura) he was attempting to register at the DMV. Rhodes went to the DMV to talk with Collins about the motorcycle incident on July 25, 2013. (App. 66, 68, 161, 172-73). Another officer, Matthew McCall, also spoke with Collins at the DMV. McCall was investigating a June 4, 2013 eluding incident involving an orange and black motorcycle with an extended frame. (App. 166).

At the DMV, Officer McCall first advised Collins of his *Miranda* rights and then questioned him about a motorcycle involved in the June 4, 2013 eluding incident. (App. 162, 165-66). Collins responded that he had not owned or driven a motorcycle in months, that it was not him, and also that the last motorcycle he had owned was green. (App. 163-64). While McCall talked to Collins at the DMV, Rhodes looked up Collins's Facebook page and took two pictures with his phone of

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[2] At some point after July 25, 2013, Eric Jones told another officer he had sold the motorcycle to Ryan Collins, and that officer related that information to Rhodes. (App. 95, 203). Jones testified at trial that he sold the motorcycle to Collins for $1800 in April 2013, telling Collins it lacked a title and was "possibly stolen." (App. 140-41, 159). Collins told Jones the lack of title or possibility it might be stolen did not concern him because he intended to turn the motorcycle into a racing bike. (App. 142, 146).

pictures on Collins's Facebook page. (App. 175). Rhodes recognized the motorcycle in the pictures as the one involved in the July 25, 2013 eluding incident. (App. 176).

After McCall finished talking with Collins, Rhodes showed Collins the two photographs he had obtained from Collins's Facebook page. (App. 67). Rhodes wanted to find the motorcycle and use it to help identify who operated it on July 25, 2013, when it eluded him. (App. 97). The first photograph depicted a residence with several vehicles parked in the driveway and one in front of the house on the street. The vehicle parked on the street was "the same Acura" Collins was attempting to register at the DMV. (App. 68-69, 82, 100). The second Facebook photograph showed an orange and black motorcycle parked between a black sedan and a silver Toyota 4-Runner in the driveway at the same residence. (App. 68-69, 124-125). Rhodes asked Collins if he knew where the house was located or where the motorcycle in the photograph was located. Collins told Rhodes that "he didn't know anything about it or where it was located." (App. 78, 175-76, 178). The photographs from the Facebook page shown to Collins depicted the same motorcycle Rhodes had "attempted to stop" on July 25, 2013. (App. 176).

Officer Rhodes testified at the suppression hearing that the motorcycle he had seen on July 25, 2013 had "been stretched out," which meant a rear end had been added onto the motorcycle to make it longer than a "conventional motorcycle," and indicated the motorcycle was a "racing type" used for drag racing. (App. 69). Rhodes also had noted that the motorcycle had chrome wheels and a chrome swing arm "which was somewhat

unique" and noted that you "normally" do not see someone driving down the road on such a motorcycle. It was "customized" and not something that could be bought "from the factory." (App. 69-70). When Officer Rhodes saw the photograph of the motorcycle on Collins's Facebook page, he was "100% sure that that was the same motorcycle that had not stopped for [him] on the bypass based on looking at it. It was very distinctive and [he] knew, absolutely no question in [his] mind that was the same motorcycle." (App. 100).

Shortly after finishing his conversation with Collins, and Collins's departure from the DMV, Officer Rhodes learned through an informant that the house in the Facebook photograph was on Dellmeade Avenue in the City of Charlottesville. (App. 70-71). Within 30 minutes of seeing the Facebook photographs, Rhodes found the house in the photograph at 2304 Dellmeade Avenue, within the City of Charlottesville, about one block from the Albemarle County line. (App. 71-73). While still in his police car, from the street, Rhodes could see the motorcycle in the driveway, which was partially covered with a white tarp. (App. 178-79).

The motorcycle was parked in front of the silver SUV at the same angle and in about the same spot as the motorcycle depicted in the Facebook photographs. (App. 179). The cover did not completely obscure the motorcycle underneath it. Rhodes testified about "a quarter of the wheel was sticking out from underneath the cover and the cover was "sticking up." (App. 90). Rhodes observed that the partially covered motorcycle was much longer than an average motorcycle by its outline under the cover and that "both" wheels were chrome. (*Id.*). Based on the outline and visible chrome

sticking out from underneath the cover, the motorcycle "appeared to be the same motorcycle that [Rhodes] had attempted to stop." (App. 72).

From the sidewalk, Officer Rhodes took a picture of the motorcycle with the tarp on it. (App. 179). Because of the mobile nature of the motorcycle, Officer Rhodes walked up the driveway about one car length and then lifted the cover off of it to obtain the license plate or VIN in his effort to determine who had driven the motorcycle on July 25, 2013. (App. 74, 90). When Rhodes took the cover off, he confirmed that the motorcycle was the same motorcycle he had been looking for since it had eluded him on July 25, 2013. (App. 100). Rhodes was 100% certain it was the same one that had eluded him on July 25th and the same one in the Facebook photos. (App. 180).

Rhodes first ran the tag number on the motorcycle, which was different than the tag number he had seen on it on July 25, 2013. The new tag number, however, was for a different motorcycle, a Kawasaki motorcycle from Waynesboro that had been sold. (App. 74, 180). Rhodes next acquired the VIN number off the motorcycle and checked the VIN, which indicated that the 2008 Suzuki had been "stolen out of New York State." (App. 74, 81, 181).

Officer Rhodes found Collins at the residence on Dellmeade Avenue later on September 10, 2013. (App. 182). Collins was dressed in a long-sleeved shirt and Timberland-style boots, "the same exact boots that the rider was wearing...the day [Rhodes] tried to stop the motorcycle." (*Id.*). Throughout the conversation, Collins's story changed several times. First, Collins stated he did not know anything about the motorcycle

and then he told Rhodes it was a friend's motorcycle. Eventually, however, Collins admitted he had purchased the motorcycle from Eric Jones. (App. 183). Collins told Rhodes the last time he moved the motorcycle was about a week earlier. (App. 183). When confronted with information showing the motorcycle had been serviced at Jarman's Sportcycles, Collins admitted to driving it there to get new tires put on it. (App. 128, 183-84). Collins explained the license plate on the motorcycle had been the plate on another motorcycle he had previously sold. (App. 184).

Collins was then arrested and Rhodes conducted a search incident to that arrest. Rhodes uncovered a key in Collins's pants pocket which fit the motorcycle in the driveway. (App. 185).

According to Collins's girlfriend, Kandace Beach, who moved to 2304 Dellmeade Avenue on August 8, 2013, Collins spent "a couple of nights per week" at that residence and was there the night of September 9-10, 2013. (App. 103-104). She testified that the motorcycle in the Facebook picture introduced into evidence had only been parked in the driveway for approximately one week prior to September 10, 2013. (App. 106, 228). Beach previously had lived intermittently at Collins's mother's home on Northfields Circle, and had spent "a good bit of time" at the Northfields Circle home with Collins. Beach testified at trial, however, that she had never seen the motorcycle at the Northfields address. (App. 226, 228).

Collins's mother, Terri Roberts, who lived on Northfields Circle, testified that the motorcycle from the Facebook photos was parked in front of her home that August. (App. 231-32, 234, 237).

ARGUMENT

THE TRIAL COURT DID NOT ERR IN DENYING COLLINS'S MOTION TO SUPPRESS BECAUSE OFFICER RHODES HAD PROBABLE CAUSE TO BELIEVE THE PARTIALLY COVERED MOTORCYCLE IN THE DRIVEWAY WAS THE SAME MOTORCYCLE INVOVLED IN THE JULY 25, 2013 ELUDING INCIDENT, IT WAS REASONABLE TO BELIEVE THAT SEARCHING IT WOULD PROVIDE INFORMATION LEADING TO THE IDENTITY OF THE RIDER IN THAT INCIDENT, AND THAT THE WARRANTLESS SEARCH WAS SUPPORTED BY EXIGENT CIRCUMSTANCES.

The issue in this case is whether Officer Rhodes's entry onto the driveway and removal of the tarp that partially covered the motorcycle was justified under the Fourth Amendment. Collins, as he did at trial, argues that Rhodes did not have probable cause and there were no exigent circumstances justifying Rhodes's entry onto the driveway and removal of the tarp.

STANDARD OF REVIEW

On appeal, the denial of a motion to suppress presents a mixed question of law and fact that this Court reviews de novo on appeal. *See Branham v. Commonwealth*, 283 Va. 273, 279, 720 S.E.2d 74, 77 (2012) (citations omitted). In that review, this Court views "the evidence in the light most favorable to the Commonwealth [granting] the Commonwealth the benefit of all reasonable inferences fairly deducible from that evidence," and it is the defendant's burden to show "that even when the evidence is reviewed in that

light, denying the motion to suppress was reversible error." *Id.*; *see also Covil v. Commonwealth*, 268 Va. 692, 696, 604 S.E.2d 79, 82 (2004) (false or evasive account is circumstance factfinder may properly consider as evidence of guilty knowledge). In reviewing the denial of the suppression motion, the Court "consider[s] facts presented both at the suppression hearing and at trial." *Testa v. Commonwealth*, 55 Va. App. 275, 279, 685 S.E.2d 213, 215 (2009) (citation omitted); *accord Mason v. Commonwealth*, 64 Va. App. 292, 296, 767 S.E.2d 726, 728 (2015) (en banc), *appeal granted on other grounds*, 2015 Va. LEXIS 152 (Oct. 29, 2015); *see, e.g., Weeks v. Commonwealth*, 248 Va. 460, 466, 450 S.E.2d 379, 383 (1994).

PRIOR RULINGS

In the circuit court, Collins argued that Officer Rhodes lacked probable cause, the automobile exception did not apply, and Rhodes could have obtained a warrant. (App. 117-18). The trial court heard and denied Collins's motion to suppress focusing on whether probable cause existed to believe the partially covered motorcycle in the driveway at 2304 Dellmeade Avenue was the same motorcycle that eluded Rhodes on July 25, 2013. (App. 119). The trial court noted that the picture of the motorcycle (without the tarp) posted on Collins's Facebook page (along with other identifying information such as the house and other vehicles) was "almost identical" to the "unique" motorcycle that eluded Rhodes; Collins's statements to Rhodes at the DMV were deceitful; and the motorcycle was in plain view. The judge went on to note that Rhodes could clearly see the partially covered motorcycle from the sidewalk and credited his

testimony that it matched the description of the "unique" motorcycle he had been looking for, and concluded that Rhodes had probable cause. (App. 120-21).

In the Court of Appeals, Collins argued the same points he raised at trial. The Court of Appeals first found that Officer Rhodes "unquestionably had probable cause to believe" that the partially covered motorcycle in the driveway was the same one that had eluded him on July 25, 2013 and summarized the unique facts Rhodes could see from a public street before he entered the property.

> These include the unusual length of the motorcycle due to it having been "stretched out" for drag racing, which was clearly visible even when under the tarp. In addition, the tarp did not extend to the ground, leaving the customized chrome wheel covers and swingarm uncovered. These are all distinctive features Officer Rhodes recognized from the motorcycle he encountered, and videorecorded, during the eluding incident. Furthermore, Officer Rhodes possessed photos of the same motorcycle before someone covered it with a tarp, parked at a similar angle and in the same location at that residence.

Collins, 65 Va. App. at 44-45, 773 S.E.2d at 622.

The Court of Appeals found it unnecessary to determine if the motorcycle was within the curtilage of the house because the exigencies apparent from the record justified the entry and search (specifically the likely loss/concealment of the item Rhodes sought to search in his effort to identify the driver); and assumed

without deciding it was within the curtilage. *Id.* at 45, 773 S.E.2d at 623. In addition, because the record clearly established exigencies separate and apart from the automobile exception, the Court of Appeals did not reach the issue. *Id.* at 44-48, 773 S.E.2d at 622-24.

In this Court, Collins asserts the officer: could not walk up the driveway; had no probable cause to remove the tarp; had no probable cause to believe that Collins was the driver of the motorcycle on July 25, 2013; and the officer should have watched the motorcycle and obtained a warrant. He also claims that the automobile exception does not apply to a car in a driveway. Collins's arguments overlook well established precedent that allows an officer to: observe items in plain view from a public street; walk up a driveway; and forgo obtaining a warrant even if there is time to obtain one. Collins's position that no exigency, including the automobile exception, applies to a vehicle in a driveway is inconsistent with the exigency precedent of the United States Supreme Court and this Court.

ANALYSIS

Fourth Amendment

An officer with probable cause to believe he will find evidence pertaining to a crime he is investigating by searching a vehicle may search that vehicle if the circumstances support the finding of an exigency. To be sure, as this Court has held, evidence pertaining to a crime includes evidence that may identify the perpetrator of a crime in which the vehicle was used. *See McCary v. Commonwealth*, 228 Va. 219, 226-29, 321 S.E.2d 637, 640-42 (1984) (officer seeking

information from within a vehicle regarding the identity of a bank robber may search said vehicle for that information provided there is probable cause to believe the robber used the vehicle as a getaway car) (citing *United States v. Robinson*, 533 F.2d 578, 583 (D.C. Cir. 1976)).

The United States Supreme Court and this Court have held that the Fourth Amendment generally, *subject to certain exceptions*, requires a police officer to obtain a warrant before conducting a search. *See California v. Carney*, 471 U.S. 386, 39[illegible] (1985) (a warrant issued by an independent judicial officer preserves the fundamental "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" subject to exceptions to that general rule); *McCary*, 228 Va. at 227, 321 S.E.2d at 641 (searches conducted without prior judicial approval are per se unreasonable under the Fourth Amendment, subject to exceptions allowed when exigencies require warrantless searches) (citing *Chambers v. Maroney*, 399 U.S. 42, 51 (1970); *Fore v. Commonwealth*, 220 Va. 1007, 1010, 265 S.E.2d 729, 731 (1980); *Thims v. Commonwealth*, 218 Va. 85, 88-89, 235 S.E.2d 443, 445 (1977)).

Collins's brief contends that Officer Rhodes needed probable cause to charge him with eluding and that a warrant (or warrantless search that falls with an exception) has to be tied to a particular person. (Def. Br. at 16-17). In rejecting Collins's argument, the Court of Appeals noted that his

> argument confuses the probable cause needed to arrest and charge an individual with the probable cause required to conduct a lawful

> search. Officer Rhodes had numerous reasons to believe that the motorcycle was the one involved in the eluding incident and that a search would provide information leading to the individual who committed the crime. Officer Rhodes's decision not to pursue eluding charges against appellant, regardless of the reason, did not vitiate the probable cause he had to search.

65 Va. App. at 45 n.3, 773 S.E.2d at 622 n.3.

The Court of Appeals is correct because warrants are not issued solely to search for a specific item of contraband (such as drugs). Warrants may issue to allow the search or seizure of items that will facilitate identification of suspects; and are routinely directed at third parties (such as communication service providers) who have no connection to a crime, but nevertheless have either evidence related to a crime or evidence that may assist in identifying a suspect. *See Zurcher v. Stanford Daily*, 436 U.S. 547, 555 (1978) ("Search warrants are not directed at persons; they authorize the search of [places] and the seizure of 'things,' and as a constitutional matter they need not even name the person from whom the things will be seized."); *Warden v. Hayden*, 387 U.S. 294, 310 (1967) ("there is no viable reason to distinguish intrusions to secure 'mere evidence' from intrusions to secure fruits, instrumentalities, or contraband");[3] *see also Wyoming*

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[3] Collins reliance on *Hayden* is misplaced. In *Hayden*, even though the specific exigency involved in *Hayden* was different, the case supports the Commonwealth's position that an officer can search for items to aid in identifying a suspect although the items themselves are not contraband. In *Hayden*, the Court held that an

v. Houghton, 526 U.S. 295, 302 (1999) (noting that *United States* v. *Ross*, 456 U.S. 798, 824 (1982), held that the permissible scope of a warrantless car search "is defined by the object of the search and the places in which there is probable cause to believe that it may be found" is the same principle reflected in *Zurcher* "involving the constitutionality of a search warrant directed at premises belonging to one who is not suspected of any crime").

An officer's actions in conducting a warrantless search of a vehicle comply with the Fourth Amendment when he "has probable cause to believe that he will find the instrumentality or ***evidence pertaining to a crime*** before they begin their warrantless search." *Dyke v. Taylor Implement Mfg. Co.*, 391 U.S. 216, 221 (1968) (emphasis added); *see United States v. Johns*, 469 U.S. 478, 483 (1985) ("exception to the warrant requirement recognized by *Carroll* allows a search of the same scope as could be authorized by a magistrate" and that a "warrant to search a vehicle would support a search of every part of the vehicle that might contain the object of the search") (citing *Ross*, 456 U.S. at 821, 823, 825). This is so because even if the police suspect a person, but lack probable cause to arrest, "such a person's property may be searched upon probable cause to believe" the evidence sought will be found. *See*

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officer could pursue an armed fleeing robbery suspect into a building and that the search of a closed washing machine for weapons in which the officer found and seized clothes that matched the description of the clothes worn by the robber did not violate the Fourth Amendment. 387 U.S. at 307. The Court concluded that the police could have "reasonably believe[d] that the [clothes] would aid in the identification of the culprit." *Id.*

United States v. Melvin, 596 F.2d 492, 495-96 (1st Cir. 1979); *see also United States v. Glenn*, 908 F.2d 163, 165 (7th Cir. 1990) (no need for a nexus between the owner and the crime under investigation for which evidence is sought; only need probable cause that the evidence sought will found in a particular place). In short, if a warrantless search is justified, the scope of that search is the same "'as could be authorized by a magistrate'" and that would include "a search of every part of the vehicle that might contain the object of the search." *Johns*, 469 U.S. at 483 (citation omitted).

Driveway

In support of his Assignment of Error, Collins argues it is undisputed that Rhodes entered the curtilage of a home. (Def. Br. at 11). His assertion, however, overlooks the standard of review and the fact that the Court of Appeals assumed without deciding, for purposes of the appeal, that Rhodes entered the curtilage for purposes of the appeal because "numerous exigencies justified the search." *Collins*, 65 Va. App. at 46, 773 S.E.2d at 623. Further, the Fourth Amendment does not prohibit an officer, without a warrant, from walking up a driveway "because that is 'no more than any private citizen might do.'" *Florida v. Jardines*, 133 S. Ct. 1409, 1416 (2013); *Robinson v. Commonwealth*, 273 Va. 26, 34, 639 S.E.2d 217, 221-22 (2007) (doctrine of implied consent deems an officer's entry by driveway or sidewalk, an entry into the curtilage, "a reasonable intrusion into an area otherwise protected by an expectation of privacy under the Fourth Amendment")

(citations omitted).[4] Although the record here was not as developed as in *Robinson*, the driveway[5] in the photographs of 2304 Dellmeade Avenue establish beyond genuine dispute that Rhodes's walking on just a portion of the driveway did not violate any interest in privacy.

The picture introduced into evidence clearly shows that the driveway is the customary manner in which people approach this house and that Officer Rhodes did not have to cross any barriers as he walked from the street, across the sidewalk, and then up the driveway toward the partially covered motorcycle, which was in

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[4] The United States Supreme Court also had no issue with officers that "proceeded down the driveway to investigate" a noise complaint. *See Brigham City v. Stuart*, 547 U.S. 398, 401 (2006); *cf. Shaver v. Commonwealth*, 30 Va. App. 789, 793, 797, 520 S.E.2d 389, 395, 397 (1999) (holding appellant had no expectation of privacy when driveway where stolen goods were located was completely visible from the road). The Supreme Court also applied the automobile exception to the warrantless search of a truck in the driveway of a farmhouse. *Pennsylvania v. Labron*, 518 U.S. 938, 939-40 (1996).

[5] Numerous courts have applied the automobile exception to vehicles parked on private driveways. *See United States v. Hines*, 449 F.3d 808, 814-15 (7th Cir. 2006); *United States v. Brookins*, 345 F.3d 231, 234, 238 (4th Cir. 2003); *United States v. Fladten*, 230 F.3d 1083, 1085-86 (8th Cir. 2000) (per curiam); *United States v. Markham*, 844 F.2d 366, 368 (6th Cir. 1988); *United States v. Hamilton*, 792 F.2d 837, 843 (9th Cir. 1986). The Ninth Circuit has also applied the exception to an inoperable vehicle parked in a driveway. *See United States v. Hatley*, 15 F.3d 856, 859 (9th Cir. 1994); *see also Michigan v. Thomas*, 458 U.S. 259, 261 (1982) (justification to conduct warrantless search of a vehicle does not depend on the reviewing court's assessment car would have been driven away).

plain view from the street. As in *Jardines*, where the Fourth Amendment was not implicated until the canine sniffed at the front door, the Fourth Amendment was not implicated here until Rhodes removed the tarp.

Probable Cause

Collins's assertion that Officer Rhodes lacked probable cause is predicated in large part on a misconception of what an officer can search and search for without violating the Fourth Amendment. Collins argues that Rhodes had no reason to suspect that the motorcycle was stolen and no reason to believe that by identifying the motorcycle it would enable Rhodes to identify Collins as the driver. (Def. Br. at 16-17). As noted in this brief previously, and by the Court of Appeals, Collins's position does not recognize that an officer can search an object that may help identify a suspect. *See supra* at 15-18. The record in this case establishes "unquestionably" that Rhodes had probable cause to believe that the partially covered motorcycle in the driveway at 2304 Dellmeade Drive on September 10, 2013 was the same motorcycle that had eluded him on July 25, 2013. *Collins*, 65 Va. App. 45, 774 S.E.2d at 622. Further, it was reasonable for Rhodes to look at information such as the license plate and VIN in an effort to identify the driver of the motorcycle on July 25, 2013.

Probable cause "does not demand any showing that [the officer's] belief be correct or more likely true than false." *Delong v. Commonwealth*, 234 Va. 357, 366, 362 S.E.2d 669, 674 (1987). Probable cause is a "flexible, commonsense standard" that in the totality of the circumstances would warrant a "person of reasonable

caution to believe" that the partially covered motorcycle in the driveway was the same motorcycle that had eluded Officer Rhodes on July 25, 2013 and that the license plate or VIN would assist in identifying the driver. *Id.* (citations omitted); *see Illinois v. Gates*, 462 U.S. 213, 232 (1983) ("probable cause is a fluid concept - turning on the assessment of probabilities in particular factual contexts - not readily, or even usefully, reduced to a neat set of legal rules."); *Taylor v. Commonwealth*, 222 Va. 816, 820, 284 S.E.2d 833, 836 (1981) (when facts and circumstances within an officer's knowledge "alone are sufficient to warrant a person of reasonable caution to believe that" evidence of a crime is present in a vehicle, probable cause exists to search that vehicle under the automobile exception). Police "officers are not required to possess either the gift of prophecy or the infallible wisdom that comes only with hindsight. They must be judged by their reaction to circumstances as they reasonably appeared to trained law enforcement officers to exist when the decision to [search] was made." *Keeter v. Commonwealth*, 222 Va. 134, 141, 278 S.E.2d 841, 846 (1981).

The evidence in this case established probable cause to believe that evidence related to the crime Rhodes was investigating would be found by searching the motorcycle and that the motorcycle Rhodes had been trying to locate was under the tarp. *See Florida v. White*, 526 U.S. 559, 565 (1999) (upholding seizure of a car from a public place where police had probable cause to believe the car was evidence of a crime); *see, e.g., McCary*, 228 Va. at 226-29, 321 S.E.2d at 640-42 (upholding search of vehicle for information regarding identity of bank robber because there was probable

cause to believe the robber used the vehicle as a getaway car); *Thims*, 218 Va. at 91-92, 235 S.E.2d at 447 (upholding entry onto private driveway and opening car door to obtain VIN because there was probable cause to believe car was stolen and contained stolen property).

After the incident, Rhodes developed Collins as a suspect. Having found the motorcycle on Collins's Facebook page, and then having located the address that corresponded with what he had seen on Collins's Facebook page, within thirty minutes of confronting Collins with the Facebook pictures, Rhodes was putting the pieces together. When he observed the partially covered motorcycle, which appeared to be the same vehicle as the one in the Facebook page photograph and the one that had eluded him, Rhodes approached the object to obtain information about its licensure and registration to further his investigation into who had driven it on July 25, 2013. (App. 97-98, 179). The now partially covered motorcycle was parked at nearly the identical angle and in about the same spot in relation to the silver SUV as the motorcycle in the Facebook photograph. It also had the same chrome wheels and extended silhouette as the motorcycle for which Rhodes had been searching.

Given the particular facts and circumstances of this case, Rhodes had probable cause to believe that the covered motorcycle in the driveway at 2304 Dellmeade Avenue was the same motorcycle. *See Ornelas v. United States*, 517 U.S. 690, 699 (1996) (courts should give due weight to the inferences drawn by law enforcement officers based upon their experiences and expertise). In short, it was evidence connected to a

crime and likely to help him identify the rider through information on the motorcycle, such as the VIN number.

Exigent Circumstances

The United States Supreme Court, as well as this Court, has recognized exigent circumstances as an exception to the warrant requirement of the Fourth Amendment. In the present case, the trial court found the partially covered motorcycle was in plain view (App. 120-21), which necessarily implicates exigent circumstances. *See Robinson*, 273 Va. at 40, 639 S.E.2d at 225 (after officers had seen evidence of a crime in plain view, exigent circumstances were required for the officer to proceed without a warrant) (citing *Horton v. California*, 496 U.S. 128, 137 n.7 (1990) ("[N]o amount of probable cause can justify a warrantless search or seizure absent 'exigent circumstances.'")).

The circumstances deemed exigent include not only plain view, as applied by the trial court, but numerous others including the imminent destruction[6] of evidence. *Kentucky v. King*, 563 U.S. 452, 460 (2011); *Verez v. Commonwealth*, 230 Va. 405, 410-11, 337 S.E.2d 749, 753 (1985) (noting ten justifications for finding exigency).[7] In addition to these instances, two exigent

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[6] *King* noted several examples of possible loss/destruction of evidence when a warrant was not required. 563 U.S. at 460 n.3 (citing *Richards v. Wisconsin*, 520 U.S. 385, 395-96 (1997); *Schmerber v. California*, 384 U.S. 757, 770-71 (1966); *United States v. Banks*, 540 U.S. 31, 37-40 (2003).

[7] There are numerous exceptions to the warrant requirement other than those cited herein. See JAMES WM. MOORE ET AL.,

circumstances (the automobile exception and search incident to arrest) apply "categorically."

We have recognized a limited class of traditional exceptions to the warrant requirement that apply categorically and thus do not require an assessment of whether the policy justifications underlying the exception, which may include exigency-based considerations, are implicated in a particular case. *See, e.g., California v. Acevedo*, 500 U.S. 565, 569-570 (1991) (automobile exception); *United States v. Robinson*, 414 U.S. 218, 224-235 (1973) (searches of a person incident to a lawful arrest). By contrast, the general exigency exception, which asks whether an emergency existed that justified a warrantless search, naturally calls for a case-specific inquiry.

Missouri v. McNeely, 133 S. Ct. 1552, 1559 n. 3 (2013). Whether a police officer was justified in acting without a warrant when an exigency requires a case-specific inquiry is determined under the totality of the circumstances test. *Id.* at 1559 (citations omitted).

We apply this "finely tuned approach" to Fourth Amendment reasonableness in this context because the police action at issue lacks "the traditional justification that...a warrant... provides." Absent that established

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MOORE'S FEDERAL PRACTICE - CRIMINAL PROCEDURE § 641.51 (2016); *see also Evans v. Commonwealth*, ____ Va. ____, ____, 776 S.E.2d 760, 763 (2015) ("No fixed legal definition fully captures the meaning of exigent circumstances. Police officers find themselves in a myriad of situations with varied fact patterns. No court could provide an exhaustive enumeration of factors that would distinguish circumstances that qualify as exigent from those that would not.").

justification, "the fact-specific nature of the reasonableness inquiry," demands that we evaluate each case of alleged exigency based "on its own facts and circumstances."

McNeely, 133 S. Ct. at 1559 (citations omitted). In the present case, as found by the Court of Appeals, there were numerous (self-evident) exigencies apparent from the record.

As noted previously, the Court of Appeals discussed the fact that the motorcycle had twice eluded police and had not been seen for approximately six weeks when Rhodes (who had developed Collins as a suspect) confronted Collins at the DMV. The Court noted Rhodes's concern over the loss of the motorcycle a third time by stating he "had a reasonable belief that the motorcycle could be removed or destroyed, as a motorcycle is readily movable," that Collins "recently had driven the motorcycle," and that "the same motorcycle had successfully eluded the police on two previous occasions, and could potentially have done so again here." 65 Va. App. at 46, 773 S.E.2d at 623.

The court in *Collins*, however, stated "mere mobility is far from the only exigency Officer Rhodes faced." *Id.* "Officer Rhodes had, within the same hour, spoken with [Collins] at the DMV where [Collins] denied owning or knowing anything about the motorcycle or the residence in the picture." *Id.* Rhodes, therefore, knew Collins was aware not only that law enforcement was investigating the motorcycle and where it might be found, but that Collins had an interest "in concealing or destroying evidence" and found the previously uncovered motorcycle was covered less than 30 minutes

after he had found it on Collins's Facebook page. 65 Va. App. at 47, 773 S.E.2d at 623.

> In the brief time between when [Collins] returned to the house and when Officer Rhodes knocked on the door, he had changed his clothing from what he wore at the DMV to jeans, a heavy long sleeve shirt, and work boots similar to those worn during the eluding incident, despite it being over 90 degrees that day. [Collins] even had the key to the motorcycle in his jeans pocket. Although the search took place before [Collins] returned home and changed, these actions further speak to the reasonableness of Officer Rhodes's belief that [Collins] might attempt to relocate the motorcycle. Together, the facts indicate that [Collins] not only possessed an interest in, but also the ability and probable intention to, move the motorcycle out of the reach of law enforcement. *See Thims v. Commonwealth*, 218 Va. 85, 91, 235 S.E.2d 443, 446 (1977) (holding that exigent circumstances existed when law enforcement went onto private property to examine a stolen vehicle, despite the fact that defendant, and the keys to the vehicle, was in police custody). In view of the above, we conclude that sufficient exigencies existed for Officer Rhodes to enter the property and examine the motorcycle.

65 Va. App. at 46-47, 773 S.E.2d at 623. Rhodes faced the loss of evidence that might assist in identifying the driver of the motorcycle on July 25, 2013, yet again, if Rhodes failed to act.

Further, Rhodes was investigating a serious felony offender who had twice eluded police. Indeed, Rhodes had to break off his pursuit of the motorcycle on July 25, 2013 due to the reckless nature in which the motorcycle was being driven (at 140 mph). Va. Code § 46.2-817 (willful and wanton disregard of signal by law enforcement officer that interferes with or endanger the operation of the law-enforcement vehicle or endangers a person is a Class 6 felony). Operating a motorcycle at a speed of 140 mph without question shows a reckless disregard for the life and safety of others.

Nevertheless, despite the unquestionable existence of probable cause and numerous exigencies evident from the record, Collins asserts that the trial court erred because it made no explicit finding of exigent circumstances, only that Officer Rhodes had probable cause. (Def. Br. at 16). In so doing, Collins ignores that "[t]here is no general requirement that trial courts must state for the record the reasons underlying their decisions." *Shannon v. Commonwealth*, 289 Va. 203, 206, 768 S.E.2d 433, 436 (2015)). "In Virginia, a trial court has no common law duty to explain in any detail the reasoning supporting its judgments. Absent a statutory requirement to do so, 'a trial court is not required to give findings of fact and conclusions of law.'" *Fitzgerald v. Commonwealth*, 223 Va. 615, 627, 292 S.E.2d 798, 805 (1982)." *Pilati v. Pilati*, 59 Va. App. 176, 180, 717 S.E.2d 807, 809 (2011).

> Trial judges sometimes refrain from providing a detailed explanation because they think "the reasons self-evident." Others may conclude that, in some cases, saying too much is as detrimental

> as saying too little. The correct balance depends on the unique context of each case, the informative value of an explanation, and the possibility of inflaming an interminable dispute with an overly detailed explanation. With few exceptions, when no specific explanation is given by a trial court, we presume the court followed the governing legal principles, and resolved all factual contests favorable to the prevailing party.

Pilati, 59 Va. App. at 181, 717 S.E.2d at 809 (citations omitted). The issue of "exigency," however, was expressly before the trial court during the motion. (App. 110-18).

Collins's assertion of error in this regard has no merit. *See Starks v. Commonwealth*, 225 Va. 48, 54, 301 S.E.2d 152, 156 (1983) ("[a]bsent clear evidence to the contrary," this Court presumes a "trial judge applied the correct standard to the facts.") (citing *Yarborough v. Commonwealth*, 217 Va. 971, 978, 234 S.E.2d 286, 291 (1977); *see also Yarborough*, 217 Va. at 978, 234 S.E.2d at 291 (appellate courts should not fix upon isolated statements of a trial judge taken out of full context and "use them as a predicate for holding the law has been misapplied").

Collins also relies on two recent cases from the United States Supreme Court (*Florida v. Jardines*, 133 S.Ct. 09 (2013), and *United States v. Jones*, 132 S.Ct. 945 (2012)), implying that one or both cases have somehow negated or altered the exigency exception for entry onto or search of property, regardless of whether the officer had probable cause.

Jones involved placement by law enforcement officers of a GPS device on a car the defendant drove. The Court held that such a trespass to property constituted a search. *Id.* at 949. The Court reasoned that the government's physical occupation of private property "for the purpose of obtaining information" constituted a search. *Id.* Importantly, the *Jones* Court refused to consider the government's alternative argument in that case that the search was reasonable because it had been supported by either reasonable suspicion or probable cause because the government had failed to raise that argument below. *Id.* at 954; *see also* 65 Va. App. at 44 n.1, 773 S.E.2d at 621 n.1.

Jardines involved a police officer walking to the front porch of Jardines's home with a narcotics dog. The Court held that this simple approach to the house did not implicate the Fourth Amendment, but that bringing the dog for purposes of obtaining information beyond the threshold constituted a search because even though the officer was implicitly allowed to approach the house as any private citizen would have been able to, his use of the dog exceeded the scope of that implied consent. 133 S.Ct. at 1415-16.

Further evidence that neither *Jardines* nor *Jones* undermined or abated the exigency exception to warrantless searches is the Court's 2011 re-affirmance that the rule against warrantless searches of a home "is subject to certain reasonable exceptions." *King*, 563 U.S. at 459. Undeniably, *King* noted that even the threshold of a house could be crossed without a warrant if exigent circumstances existed. *Id.* "One well-recognized exception applies when 'the exigencies of the situation' make the needs of law enforcement so

compelling that [a] warrantless search is objectively reasonable under the Fourth Amendment." *Id.* at 460 (quoting *Mincey v. Arizona*, 437 U.S. 385, 394 (1978), and citing *Payton* v. *New York*, 445 U.S. 573, 590 (1980)).

Jardines merely noted that the Court had added to the reasonable expectation test established in *Katz v. United States*, 389 U.S. 347 (1967), by announcing a physical intrusion test in *Jones*. 133 S.Ct. at 1417. In sum, neither *Jardines* nor *Jones* limited or nullified the long-standing precedent establishing exceptions to the warrant requirement. That point is well-established in the precedent of this Court.

> When government agents conduct a search or seizure within protected areas of a dwelling without a warrant such actions are presumptively unreasonable, *Payton v. New York*, 445 U.S. 573, 586-87 (1980), and unlawful ***unless they are supported by both probable cause and exigent circumstances***. *Kirk v. Louisiana*, 536 U.S. 635, 638 (2002).

Robinson, 273 Va. at 34, 639 S.E.2d at 221 (emphasis added); *accord Keeter*, 222 Va. At 141, 278 S.E.2d at 846. In addition to the exigency the Court of Appeals found to sustain the trial court's ruling, at least two other recognized exigencies that support the denial of Collins's motion to suppress are apparent from the record.

Automobile Exception

Although mentioned but not applied by the Court of Appeals, 65 Va. App. at 46-47, 773 S.E.2d at 623, the

automobile exception is clearly applicable here.[8] This categorical exigency exception was first recognized nearly 100 years ago in *Carroll v. United States*, 267 U.S. 132, 153 (1925), and has no separate exigency requirement. *Maryland v. Dyson*, 527 U.S. 465, 466 (1999).

We made this clear in *United States v. Ross*, 456 U.S. 798, 809 (1982), when we said that in cases where there was probable cause to search a vehicle "a search is not unreasonable if based on facts that would justify the issuance of a warrant, *even though a warrant has not been actually obtained.*" (Emphasis added). In a case with virtually identical facts to this one (even down to the bag of cocaine in the trunk of the car), *Pennsylvania v. Labron*, 518 U.S. 938 (1996) (per curiam), we repeated that the automobile exception does not have a separate exigency requirement: "If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment...permits police to search the vehicle without more." *Id.* at 940. *Dyson*, 527 U.S. at 467.

If there is one fact that this record establishes it is that the 2008 Suzuki motorcycle was "readily mobile." "'If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment...permits police to search the vehicle

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[8] On appeal, a judgment can be affirmed on alternative legal reasoning. *See Director of the Dep't of Corr. v. Kozich*, ____ Va. ____, ____, 779 S.E.2d 555, 563 n.12 (2015) (citing *Alexandria Redevelopment & Hous. Auth. v. Walker*, 290 Va. 150, 156 n.1, 772 S.E.2d 297, 300 n.1 (2015); *Perry v. Commonwealth*, 280 Va. 572, 581-82, 701 S.E.2d 431, 437 (2010).

without more.'" *Id. Dyson* made clear that exigent circumstances are presumed when an operational vehicle is involved. *Id.* at 466-67; *see Labron*, 518 U.S. at 940 (an automobile's inherent mobility is "an exigency sufficient to excuse failure to obtain a search warrant once probable cause to conduct the search is clear").

As noted previously, Collins's argument regarding the alleged significance of the driveway is of no moment or merit. If the magistrate could have issued a warrant to authorize Rhodes to enter the driveway and lift the tarp, then Rhodes's actions did not violate the Fourth Amendment. "'For constitutional purposes, we see no difference between on the one hand seizing and holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without a warrant. Given probable cause to search, either course is reasonable under the Fourth Amendment.'" *Ross*, 456 U.S. at 807 n. 9 (quoting *Chambers*, 399 U.S. at 52); *see supra* at 15-18.

Plain View Exception

As discussed previously, the trial court denied Collins's motion because the partially covered motorcycle was in plain view and the facts known to the officer formed a reasonable basis upon which to conclude that the motorcycle that had eluded him on July 25, 2013 was the same motorcycle that was partially covered in the driveway on Dellmeade Avenue. "The seizure of property in plain view is presumptively reasonable assuming that there is probable cause to associate the property with criminal activity." *Payton*, 445 U.S. at 587; *see, e.g., United*

States v. Drew, 451 F.2d 230, 233-34 (5th Cir. 1971) (outline of a weapon inside an opaque plastic folder was in plain view and sufficient basis for seizure of and search within the folder); *State v. Parnell*, 960 So.2d 1091, 1099 (La. App. 2007) (outline of weapon in defendant's pocket gave officer probable cause to arrest); *Commonwealth v. Barrett*, 458 N.E.2d 348, 349 (Mass. App. 1984) (observation of a firearm in defendant's pocket gave officer probable cause to believe defendant was carrying a firearm and his action in taking the weapon was justified); *State v. Peck*, 283 S.E.2d 383, 386 (N.C. Ct. App. 1981) (plain view does not require "unobstructed sight," but only as much sight as necessary to give reasonable man belief evidence of criminal activity present); *see also Texas v. Brown*, 460 U.S. 730, 743 (1983) (plurality opinion) (irrelevant that officer could not see through the "opaque fabric of the balloon" because of its distinctive character).

In sum, the trial judge did not err in denying the motion to suppress because Officer Rhodes had probable cause to believe that he would find evidence related to his investigation and exigent circumstances - indeed, several different recognized exigencies existed. The Court of Appeals did not err in affirming the trial court's judgment.

CONCLUSION

For these reasons, the judgment of the Court of Appeals of Virginia and the judgment of the Albemarle Circuit Court should be affirmed.